

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1111
PROPOSED COMMITTEE SUBSTITUTE H1111-PCS70384-TC-24

Short Title: Campaign Finance Amendments.

(Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE MORE SPECIFIC WHEN AN INDIVIDUAL BECOMES A "CANDIDATE" FOR CAMPAIGN FINANCE LAW AND TO DEFINE AND PROVIDE FOR DISCLOSURE OF FUNDING FOR "CANDIDACY EXPLORATION"; TO USE DIFFERENT TERMINOLOGY AND DEFINE TERMS IN THE LEGAL EXPENSE FUNDS STATUTE AND CLARIFY CANDIDATE CONTRIBUTIONS TO LEGAL EXPENSE FUNDS; AND TO REQUIRE THAT A TREASURER FOR A NORTH CAROLINA COMMITTEE BE A NORTH CAROLINA RESIDENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-278.6(4) reads as rewritten:

"(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office.

Examples of positive action include:

- a. ~~filed~~ Filing a notice of candidacy or a petition requesting to be a candidate, ~~or~~
- b. ~~has been certified~~ Being certified as a nominee of a political party for a vacancy,
- c. ~~has otherwise qualified~~ Otherwise qualifying as a candidate in a manner authorized by law, ~~or~~
- d. Making a public announcement of a definite intent to run for public office in a particular election, or
- e. ~~has received~~ Receiving funds or ~~made~~ making payments or ~~has given~~ giving the consent for anyone else to receive funds or transfer anything of value for the purpose of ~~exploring or~~ bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."

SECTION 1.(b) G.S. 163-278.6 is amended by adding a new subdivision to read:



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1 "(4a) The term "candidacy exploration" means actions taken by an individual to
2 explore the feasibility of becoming a candidate prior to taking positive action
3 for the purpose of bringing about that individual's nomination or election to
4 public office."

5 **SECTION 1.(c)** Article 22A of Chapter 163 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 163-278.7B. Candidacy exploration.**

8 (a) Record Keeping. – An individual who engages in candidacy exploration shall keep
9 records of all funds received and expended for that purpose and shall retain those records for a
10 minimum of two years.

11 (b) Reporting. – An individual without an active candidate campaign committee who,
12 subsequent to candidacy exploration, becomes a candidate shall include as a part of the
13 organizational report submitted pursuant to G.S. 163-278.9(a)(1) a report of all funds received
14 and expended for the purpose of candidacy exploration. An individual with an active candidate
15 campaign committee who engages in candidacy exploration shall include a report of all funds
16 received and expended for the purpose of candidacy exploration with reports required pursuant
17 to G.S. 163-278.9."

18 **SECTION 2.(a)** G.S. 163-278.300 reads as rewritten:

19 **"§ 163-278.300. Definitions.**

20 As used in this Article, the following terms mean:

21 (1) Board. – The State Board of Elections.

22 (2) ~~Contribution.~~ Legal expense donation. – ~~As defined in G.S. 163-278.6. A~~
23 legal expense donation means any advance, conveyance, deposit,
24 distribution, transfer of funds, loan, payment, gift, pledge, subscription of
25 money, anything of value whatsoever, and any contract, agreement, promise,
26 or other obligation, whether or not legally enforceable, to make a
27 contribution to a legal expense fund for a permitted use as provided in
28 G.S. 163-278.320. The term "~~contribution~~" "legal expense donation" does not
29 include either of the following:

30 a. The provision of legal services to an elected officer by the State or
31 any of its political subdivisions when those services are authorized or
32 required by law, or

33 b. The provision of free or pro bono legal advice or legal services,
34 provided that any costs incurred or expenses advanced for which
35 clients are liable under other provisions of law shall be deemed
36 ~~contributions.~~ legal expense donations.

37 (3) Elected officer. – Any individual serving in or seeking a public office. An
38 individual is seeking a public office when that individual has filed any
39 notice, petition, or other document required by law or local act as a condition
40 of election to public office. An individual continues to be an elected officer
41 for purposes of this Article as long as a legal action commenced while the
42 individual was an elected officer continues. If a legal action is commenced
43 after an individual ceases to serve in or seek public office but the legal action
44 concerns subject matter in the individual's official capacity as an elected
45 officer, for purposes of this Article, that individual is an elected officer as
46 long as that legal action continues.

47 (4) ~~Expenditure.~~ – ~~As defined in G.S. 163-278.6. An expenditure means any~~
48 purchase, advance, conveyance, deposit, distribution, transfer of funds, loan,
49 payment, gift, pledge, subscription of money, anything of value whatsoever,
50 and any contract, agreement, promise, or other obligation, whether or not

1 legally enforceable, to make an expenditure, by a legal defense fund for a
2 permitted use as provided in G.S. 163-278.320.

- 3 (5) Legal action. – A formal dispute in a judicial, legislative, or administrative
4 forum, including but not limited to, a civil or criminal action filed in a court,
5 a complaint or protest filed with a board of elections, an election contest
6 filed under Article 3 of Chapter 120 of the General Statutes or
7 G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or
8 Legislative Ethics Committee. The term "legal action" also includes
9 investigations made or conducted before the commencement of any formal
10 proceedings. The term "legal action" does not include the election itself or
11 the campaign for election.
- 12 (6) Legal expense fund. – Any collection of money for the purpose of funding a
13 legal action, or a potential legal action, taken by or against an elected officer
14 in that elected officer's official capacity.
- 15 (7) Official capacity. – Related to or resulting from the campaign for public
16 office or related to or resulting from holding public office. "Official
17 capacity" is not limited to "scope and course of employment" as used in G.S.
18 143-300.3.
- 19 (8) Public office. – As defined in G.S. 163-278.6.
- 20 (9) Treasurer. – An individual appointed by an elected officer or other
21 individual or group of individuals collecting money for a legal expense
22 fund."

23 **SECTION 2.(b)** G.S. 163-278.301 reads as rewritten:

24 **"§ 163-278.301. Creation of legal expense funds.**

25 (a) An elected officer, or another individual or group of individuals on the elected
26 officer's behalf, shall create a legal expense fund if given a ~~contribution,~~ legal expense
27 donation, other than from that elected officer's self, spouse, parents, brothers, or sisters, for any
28 of the following purposes:

- 29 (1) To fund an existing legal action taken by or against the elected officer in that
30 elected officer's official capacity.
- 31 (2) To fund a potential legal action taken by or against an elected officer in that
32 elected officer's official capacity.

33 (b) This section shall not apply to any ~~contribution-payment~~ to the State or any of its
34 political subdivisions.

35 (c) The legal expense fund shall comply with all provisions of this Article.

36 (d) If an elected officer funds legal actions entirely from that elected officer's own
37 ~~contributions or the contributions-~~ legal expense donations or those of the elected officer's
38 spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense
39 fund. If a legal expense fund accepts ~~contributions-~~ legal expense donations as described in
40 subsection (a) of this section, that legal expense fund shall report the elected officer's own
41 ~~contributions-~~ legal expense donations and those of those family members along with the other
42 ~~contributions-~~ legal expense donations in accordance with G.S. 163-278.310.

43 (e) No more than one legal expense fund shall be created by or for an elected officer for
44 the same legal action. Legal actions arising out of the same set of transactions and occurrences
45 are deemed the same legal action for purposes of this subsection. A legal expense fund created
46 for one legal action or potential legal action may be kept open by or on behalf of the elected
47 officer for subsequent legal actions or potential legal actions.

48 (f) Contractual arrangements, including liability insurance, or commercial relationships
49 or arrangements made in the normal course of business if not made for the purpose of lobbying,
50 are not ~~"contributions"~~ "legal expense donations" for purposes of this Article. Use of such
51 contractual arrangements to fund legal actions does not by itself require the elected officer to

1 create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a)
2 of this section, such contractual arrangements shall be reported as expenditures.

3 (g) A violation of this Article shall be punishable as a Class 1 misdemeanor."

4 **SECTION 2.(c)** G.S. 163-278.307 reads as rewritten:

5 **"§ 163-278.307. Detailed accounts to be kept by treasurer.**

6 (a) The treasurer of each legal expense fund shall keep detailed accounts, current within
7 seven calendar days after the date of receiving a ~~contribution~~ legal expense donation or making
8 an expenditure, of all ~~contributions~~ legal expense donations received and all expenditures made
9 by or on behalf of the legal expense fund.

10 (b) Accounts kept by the treasurer of a legal expense fund or the accounts of a treasurer
11 or legal expense fund at any bank or other depository may be inspected by a member, designee,
12 agent, attorney, or employee of the Board who is making an investigation pursuant to G.S.
13 163-278.22.

14 (c) For purposes of this section, "detailed accounts" shall mean at least all information
15 required to be included in the quarterly report required under this Article.

16 (d) When a treasurer shows that best efforts have been used to obtain, maintain, and
17 submit the information required by this Article, any report of the legal expense shall be
18 considered in compliance with this Article and shall not be the basis for criminal prosecution or
19 the imposition of civil penalties. The State Board of Elections shall adopt rules to implement
20 this subsection."

21 **SECTION 2.(d)** G.S. 163-278.308 reads as rewritten:

22 **"§ 163-278.308. Reports filed with Board.**

23 (a) The treasurer of each legal expense fund shall file with the Board the following
24 reports:

25 (1) Organizational report. – The report required under G.S. 163-278.309.

26 (2) Quarterly report. – The report required under G.S. 163-278.310.

27 (b) Any report or attachment required by this Article must be filed under certification of
28 the treasurer as true and correct to the best of the knowledge of that officer.

29 (c) The organizational report shall be filed within 10 calendar days of the creation of
30 the legal expense fund. All quarterly reports shall be filed with the Board no later than 10
31 business days after the end of each calendar quarter.

32 (d) Treasurers shall electronically file each report required by this section that shows a
33 cumulative total for the quarter in excess of five thousand dollars (\$5,000) in ~~contributions~~
34 legal expense donations or expenditures, according to rules adopted by the Board. The Board
35 shall provide the software necessary to the treasurer to file the required electronic report at no
36 cost to the legal expense fund.

37 (e) Any statement required to be filed under this Article shall be signed and certified as
38 true and correct by the treasurer and shall be certified as true and correct to the best of the
39 treasurer's knowledge. The elected officer creating the legal expense fund, or the other
40 individual or group of individuals creating the legal expense fund on the elected officer's
41 behalf, shall certify as true and correct to the best of their knowledge the organizational report
42 and appointment of the treasurer. A certification under this Article shall be treated as under
43 oath, and any individual making a certification under this Article knowing the information to be
44 untrue is guilty of a Class I felony."

45 **SECTION 2.(e)** G.S. 163-278.310 reads as rewritten:

46 **"§ 163-278.310. Quarterly report.**

47 The treasurer of each legal expense fund shall be required to file a quarterly report with the
48 Board containing all of the following:

49 (1) ~~Contributions~~ Legal expense donations. – The name and complete mailing
50 address of each ~~contributor~~ donor, the amount of the ~~contribution~~ legal
51 expense donation, the principal occupation of the ~~contributor~~ donor, and the

1 date the ~~contribution~~legal expense donation was received. The total sum of
2 all ~~contributions~~legal expense donations to date shall also be plainly
3 exhibited. The treasurer is not required to report the name of any ~~contributor~~
4 donor making a total ~~contribution~~legal expense donation of fifty dollars
5 (\$50.00) or less in a calendar quarter, but shall instead report the fact that the
6 treasurer has received a total ~~contribution~~legal expense donation of fifty
7 dollars (\$50.00) or less, the amount of the ~~contribution~~legal expense
8 donation, and the date of receipt.

9 (2) Expenditures. – A list of all expenditures made by or on behalf of the legal
10 expense fund. The report shall list the name and complete mailing address of
11 each payee, the amount paid, the purpose, and the date such payment was
12 made. The total sum of all expenditures to date shall also be plainly
13 exhibited. The payee shall be the entity to whom the legal expense fund is
14 obligated to make the expenditure. If the expenditure is to a financial
15 institution for revolving credit or a reimbursement for a payment to a
16 financial institution for revolving credit, the statement shall also include a
17 specific itemization of the goods and services purchased with the revolving
18 credit. If the obligation is for more than one good or service, the statement
19 shall include a specific itemization of the obligation so as to provide a
20 reasonable understanding of the obligation.

21 (3) Loans. – All proceeds from loans shall be recorded separately with a detailed
22 analysis reflecting the amount of the loan, the source, the period, the rate of
23 interest, and the security pledged, if any, and all makers and endorsers."

24 **SECTION 2.(f)** G.S. 163-278.316 reads as rewritten:

25 **"§ 163-278.316. Limitations on ~~contributions~~legal expense donations.**

26 (a) No entity shall make, and no treasurer shall accept, any monetary ~~contribution~~legal
27 expense donation in excess of fifty dollars (\$50.00) unless such ~~contribution~~legal expense
28 donation is in the form of a check, draft, money order, credit card charge, debit, or other
29 noncash method that can be subject to written verification. No ~~contribution~~legal expense
30 donation in the form of check, draft, money order, credit card charge, debit, or other noncash
31 method may be made or accepted unless it contains a specific designation of the intended
32 ~~contributor~~donee chosen by the ~~contributor~~donor.

33 (b) The State Board of Elections may adopt rules as to the reporting and verification of
34 any method of ~~contribution~~legal expense donation payment allowed under this Article. For
35 ~~contributions~~legal expense donation by money order, the State Board shall adopt rules to
36 ensure an audit trail for every ~~contribution~~legal expense donation so that the identity of the
37 ~~contributor~~donor can be determined.

38 (c) For any ~~contribution~~legal expense donation made by credit card, the credit card
39 account number of a ~~contributor~~donor is not a public record.

40 (d) No legal expense fund shall accept ~~contributions~~legal expense donations from a
41 corporation, labor union, insurance company, professional association, or business entity in
42 excess of four thousand dollars (\$4,000) per calendar year. No legal expense fund shall accept
43 ~~contributions~~legal expense donations from a corporation which when totaled with
44 ~~contributions~~legal expense donations to the same legal expense fund for the same calendar
45 year from any affiliated corporation exceed the per calendar year ~~contribution~~legal expense
46 donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~
47 legal expense donations from a labor union which when totaled with ~~contributions~~legal
48 expense donations to the same legal expense fund for the same calendar year from any
49 affiliated labor union exceed the per calendar year ~~contribution~~legal expense donation limits
50 for that legal expense fund. No legal expense fund shall accept ~~contributions~~legal expense
51 donations from an insurance company which when totaled with ~~contributions~~legal expense

1 donations to the same legal expense fund for the same calendar year from any affiliated
2 insurance company exceed the per calendar year ~~contribution~~-legal expense donation limits for
3 that legal expense fund. No legal expense fund shall accept ~~contributions~~-legal expense
4 donations from a professional association which when totaled with ~~contributions~~-legal expense
5 donations to the same legal expense fund for the same calendar year from any affiliated
6 professional association exceed the per calendar year ~~contribution~~-legal expense donation limits
7 for that legal expense fund. No legal expense fund shall accept ~~contributions~~-legal expense
8 donations from a business entity which when totaled with ~~contributions~~-legal expense donations
9 to the same legal expense fund for the same calendar year from any affiliated business entity
10 exceed the per calendar year ~~contribution~~-legal expense donation limits for that legal expense
11 fund. The definitions of corporation, labor union, insurance company, professional association,
12 and business entity are the same as those in G.S. 163-278.6. This subsection does not apply to
13 political committees created pursuant to G.S. 163-278.19(b), except that no legal expense fund
14 shall accept a ~~contribution~~-legal expense donation which would be a violation of G.S.
15 163-278.13B if accepted by a candidate or political committee. This subsection does not apply
16 to corporations permitted to make contributions in G.S. 163-278.19(f).

17 (e) No entity shall make a ~~contribution~~-legal expense donation to a legal expense fund
18 that the legal expense fund could not accept under subsection (d) of this section."

19 **SECTION 2.(g)** G.S. 163-278.320 reads as rewritten:

20 "**§ 163-278.320. Permitted uses of legal expense funds.**

21 (a) A legal expense fund may be used for reasonable expenses actually incurred by the
22 elected officer in relation to a legal action or potential legal action brought by or against the
23 elected officer in that elected officer's official capacity. The elected officer's campaign itself
24 shall not be funded from a legal expense fund.

25 (b) Upon closing a legal expense account, the treasurer shall distribute the remaining
26 monies in the legal expense fund to any of the following:

- 27 (1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter 7A of the
28 General Statutes.
- 29 (2) The North Carolina State Bar for the provision of civil legal services for
30 indigents.
- 31 (3) ~~Contributions~~-Payments to an organization described in section 170(c) of the
32 Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the
33 candidate or the candidate's spouse, children, parents, brothers, or sisters are
34 not employed by the organization.
- 35 (4) To return all or a portion of a ~~contribution~~-legal expense donation to the
36 ~~contributor~~-donor.
- 37 (5) Payment to the Escheat Fund established by Chapter 116B of the General
38 Statutes."

39 **SECTION 2.(h)** G.S. 163-278.16B(a) reads as rewritten:

40 (a) A candidate or candidate campaign committee may use contributions only for the
41 following purposes:

- 42 (1) Expenditures resulting from the campaign for public office by the candidate
43 or candidate's campaign committee.
- 44 (2) Expenditures resulting from holding public office.
- 45 (3) Donations to an organization described in section 170(c) of the Internal
46 Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or
47 the candidate's spouse, children, parents, brothers, or sisters are not
48 employed by the organization.
- 49 (4) Contributions to a national, State, or district or county committee of a
50 political party or a caucus of the political party.
- 51 (5) Contributions to another candidate or candidate's campaign committee.

- 1 (6) To return all or a portion of a contribution to the contributor.
2 (7) Payment of any penalties against the candidate or candidate's campaign
3 committee for violation of this Article imposed by a board of elections or a
4 court of competent jurisdiction.
5 (8) Payment to the Escheat Fund established by Chapter 116B of the General
6 Statutes.
7 (9) Legal expense donation not in excess of four thousand dollars (\$4,000) to a
8 legal expense fund established pursuant to Article 22M of Chapter 163 of the
9 General Statutes."

10 **SECTION 3.** G.S. 163-278.7(a) reads as rewritten:

11 "(a) Each candidate, political committee, and referendum committee shall appoint a
12 treasurer and, under verification, report the name and address of the treasurer to the Board.
13 Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate
14 may appoint himself or any other individual, including any relative except his spouse, as his
15 treasurer, and, upon failure to file report designating a treasurer, the candidate shall be
16 concluded to have appointed himself as treasurer and shall be required to personally fulfill the
17 duties and responsibilities imposed upon the appointed treasurer and subject to the penalties
18 and sanctions hereinafter provided."

19 **SECTION 4.** This act becomes effective December 1, 2009.