

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1111  
Committee Substitute Favorable 4/23/09  
PROPOSED COMMITTEE SUBSTITUTE H1111-PCS80381-RR-29

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; TO REVISE THE WAY THE DEFINITIONS OF "CONTRIBUTION" AND "EXPENDITURE" DEAL WITH PROMISES; 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.



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1 Special definitions of "candidate" and "candidate campaign committee" that  
2 apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."

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

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

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

10 "**§ 163-278.7B. Candidacy exploration.**

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

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

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

22 "**§ 163-278.300. Definitions.**

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

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

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

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

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

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

49 (4) Expenditure. – ~~As defined in G.S. 163-278.6.~~ An expenditure means any  
50 purchase, advance, conveyance, deposit, distribution, transfer of funds, loan,  
51 payment, gift, pledge, subscription of money, anything of value whatsoever,

1 and any contract, agreement, promise, or other obligation to make an  
2 expenditure, by a legal defense fund for a permitted use as provided in  
3 G.S. 163-278.320. An expenditure forgiven by a person or entity to whom it  
4 is owed shall be reported as a legal expense donation.

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

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

26 **"§ 163-278.301. Creation of legal expense funds.**

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

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

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

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

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

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

50 (f) Contractual arrangements, including liability insurance, or commercial relationships  
51 or arrangements made in the normal course of business if not made for the purpose of lobbying,

1 are not "~~contributions~~" "legal expense donations" for purposes of this Article. Use of such  
2 contractual arrangements to fund legal actions does not by itself require the elected officer to  
3 create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a)  
4 of this section, such contractual arrangements shall be reported as expenditures.

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

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

7 "**§ 163-278.307. Detailed accounts to be kept by treasurer.**

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

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

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

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

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

24 "**§ 163-278.308. Reports filed with Board.**

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

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

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

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

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

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

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

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

48 "**§ 163-278.310. Quarterly report.**

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

- 1           (1) ~~Contributions.~~ Legal expense donations. – The name and complete mailing  
2 address of each ~~contributor, donor,~~ the amount of the ~~contribution, legal~~  
3 expense donation, the principal occupation of the ~~contributor, donor,~~ and the  
4 date the ~~contribution legal expense donation~~ was received. The total sum of  
5 all ~~contributions legal expense donations~~ to date shall also be plainly  
6 exhibited. The treasurer is not required to report the name of any ~~contributor~~  
7 donor making a total ~~contribution legal expense donation~~ of fifty dollars  
8 (\$50.00) or less in a calendar quarter, but shall instead report the fact that the  
9 treasurer has received a total ~~contribution legal expense donation~~ of fifty  
10 dollars (\$50.00) or less, the amount of the ~~contribution, legal expense~~  
11 donation, and the date of receipt.
- 12           (2) Expenditures. – A list of all expenditures made by or on behalf of the legal  
13 expense fund. The report shall list the name and complete mailing address of  
14 each payee, the amount paid, the purpose, and the date such payment was  
15 made. The total sum of all expenditures to date shall also be plainly  
16 exhibited. The payee shall be the entity to whom the legal expense fund is  
17 obligated to make the expenditure. If the expenditure is to a financial  
18 institution for revolving credit or a reimbursement for a payment to a  
19 financial institution for revolving credit, the statement shall also include a  
20 specific itemization of the goods and services purchased with the revolving  
21 credit. If the obligation is for more than one good or service, the statement  
22 shall include a specific itemization of the obligation so as to provide a  
23 reasonable understanding of the obligation.
- 24           (3) Loans. – All proceeds from loans shall be recorded separately with a detailed  
25 analysis reflecting the amount of the loan, the source, the period, the rate of  
26 interest, and the security pledged, if any, and all makers and endorsers."

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

28           "**§ 163-278.316. Limitations on ~~contributions, legal expense donations.~~**

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

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

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

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

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

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

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

23 "**§ 163-278.320. Permitted uses of legal expense funds.**

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

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

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

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

43 "(a) A candidate or candidate campaign committee may use contributions only for the  
44 following purposes:

- 45 (1) Expenditures resulting from the campaign for public office by the candidate  
46 or candidate's campaign committee.
- 47 (2) Expenditures resulting from holding public office.
- 48 (3) Donations to an organization described in section 170(c) of the Internal  
49 Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or  
50 the candidate's spouse, children, parents, brothers, or sisters are not  
51 employed by the organization.

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

13 **SECTION 3.(a)** G.S. 163-278.6(6) reads as rewritten:

14 "(6) The terms "contribute" or "contribution" mean any advance, conveyance,  
15 deposit, distribution, transfer of funds, loan, payment, gift, pledge or  
16 subscription of money or anything of value whatsoever, to a candidate to  
17 support or oppose the nomination or election of one or more clearly  
18 identified candidates, to a political committee, to a political party, or to a  
19 referendum committee, whether or not made in an election year, and any  
20 contract, agreement, ~~promise or other obligation, whether or not legally~~  
21 ~~enforceable, obligation~~ to make a contribution. These terms include, without  
22 limitation, such contributions as labor or personal services, postage,  
23 publication of campaign literature or materials, in-kind transfers, loans or  
24 use of any supplies, office machinery, vehicles, aircraft, office space, or  
25 similar or related services, goods, or personal or real property. These terms  
26 also include, without limitation, the proceeds of sale of services, campaign  
27 literature and materials, wearing apparel, tickets or admission prices to  
28 campaign events such as rallies or dinners, and the proceeds of sale of any  
29 campaign-related services or goods. Notwithstanding the foregoing  
30 meanings of "contribution," the word shall not be construed to include  
31 services provided without compensation by individuals volunteering a  
32 portion or all of their time on behalf of a candidate, political committee, or  
33 referendum committee. The term "contribution" does not include an  
34 "independent expenditure." If:

- 35 a. Any individual, person, committee, association, or any other  
36 organization or group of individuals, including but not limited to, a  
37 political organization (as defined in section 527(e)(1) of the Internal  
38 Revenue Code of 1986) makes, or contracts to make, any  
39 disbursement for any electioneering communication, as defined in  
40 G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and  
41 b. That disbursement is coordinated with a candidate, an authorized  
42 political committee of that candidate, a State or local political party  
43 or committee of that party, or an agent or official of any such  
44 candidate, party, or committee  
45 that disbursement or contracting shall be treated as a contribution to the  
46 candidate supported by the electioneering communication or that candidate's  
47 party and as an expenditure by that candidate or that candidate's party."

48 **SECTION 3.(b)** G.S. 163-278.6(9) reads as rewritten:

49 "(9) The terms "expend" or "expenditure" mean any purchase, advance,  
50 conveyance, deposit, distribution, transfer of funds, loan, payment, gift,  
51 pledge or subscription of money or anything of value whatsoever, whether or

1 not made in an election year, and any contract, agreement, promise or other  
2 ~~obligation, whether or not legally enforceable, obligation~~ to make an  
3 expenditure, to support or oppose the nomination, election, or passage of one  
4 or more clearly identified candidates, or ballot measure. An expenditure  
5 forgiven by a person or entity to whom it is owed shall be reported as a  
6 contribution. Supporting or opposing the election of clearly identified  
7 candidates includes supporting or opposing the candidates of a clearly  
8 identified political party. The term "expenditure" also includes any payment  
9 or other transfer made by a candidate, political committee, or referendum  
10 committee."

11 **SECTION 4.** G.S. 163-278.7(a) reads as rewritten:

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

20 **SECTION 5.** This act becomes effective December 1, 2009.