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HOUSE BILL 1737
Committee Substitute Favorable 5/21/07
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Short Title: Legal Expense Funds.

(Public)

Sponsors:

Referred to:

April 19, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE LEGAL EXPENSE FUNDS OF ELECTED OFFICERS TO
3 PROVIDE FOR DISCLOSURE OF CONTRIBUTIONS AND EXPENDITURES
4 AND TO LIMIT CONTRIBUTIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Subchapter VIII of Chapter 163 is amended to add a new
7 Article to read:

8 "Article 22M.

9 "Legal Expense Funds.

10 "**§ 163-278.300. Definitions.**

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

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

13 (2) Contribution. – As defined in G.S. 163-278.6.

14 (3) Elected officer. – Any individual serving in or seeking an elected
15 office in this State. An individual is seeking elected office when that
16 person has filed any notice, petition, or other document required by
17 law or local act.

18 (4) Expenditure. – As defined in G.S. 163-278.6.

19 (5) Legal expense fund. – Any collection of money for the purpose of
20 funding a legal action, or a potential legal action, taken by or against
21 an elected officer in that elected officer's official capacity.

22 (6) Person. – An individual.

23 (7) Treasurer. – An individual appointed by an elected officer or other
24 person or group of persons collecting money for a legal expense fund.

25 "**§ 163-278.301. Creation of legal expense funds.**

26 (a) An elected officer, or another person or group of persons on the elected
27 officer's behalf, shall create a legal expense fund if given a contribution for any of the
28 following purposes:

1 (1) To fund an existing legal action taken by or against the elected officer
2 in that elected officer's official capacity.

3 (2) To fund a potential legal action, taken by or against an elected officer
4 in that elected officer's official capacity.

5 (b) This section shall not apply to any contribution to the State or any of its
6 political subdivisions.

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

8 (d) A violation of this Article shall be punishable as a Class 1 misdemeanor.

9 "**§§ 163-278.302 through 163-278.305: Reserved for future codification purposes.**

10 "**§ 163-278.306. Treasurer.**

11 (a) Each legal expense fund shall appoint a treasurer and, under verification,
12 report the name and address of the treasurer to the Board.

13 (b) A legal expense fund may remove its treasurer. In case of the death,
14 resignation, or removal of its treasurer, the legal expense fund shall appoint a successor
15 within 10 calendar days of the vacancy and certify the name and address of the
16 successor in the same manner provided in the case of an original appointment.

17 (c) Every treasurer of a legal expense fund shall receive training from the Board
18 as to the duties of the office within three months of appointment and at least once every
19 four years thereafter.

20 "**§ 163-278.307. Detailed accounts to be kept by treasurer.**

21 (a) The treasurer of each legal expense fund shall keep detailed accounts, current
22 within seven calendar days after the date of receiving a contribution or making an
23 expenditure, of all contributions received and all expenditures made by or on behalf of
24 the legal expense fund.

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

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

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

36 "**§ 163-278.308. Reports filed with Board.**

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

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

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

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

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

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

9 **"§ 163-278.309. Organizational report.**

10 (a) Each appointed treasurer shall file with the Board a statement of organization
11 that includes all of the following:

12 (1) The name, address, and purpose of the legal expense fund.

13 (2) The names, addresses, and relationships of affiliated or connected
14 elected officers, candidates, political committees, referendum
15 committees, political parties, or similar organizations.

16 (3) The name, address, and position with the legal expense fund of the
17 custodian of books and accounts.

18 (4) A listing of all banks, safety deposit boxes, or other depositories used,
19 including the names and numbers of all accounts maintained and the
20 numbers of all such safety deposit boxes used. The Board shall keep
21 any account number required by this Article confidential except as
22 necessary to conduct an audit or investigation, except as required by a
23 court of competent jurisdiction, or except as confidentiality is waived
24 by the treasurer. Disclosure of an account number in violation of this
25 subdivision shall not give rise to a civil cause of action. This limitation
26 of liability does not apply to the disclosure of account numbers in
27 violation of this subdivision as a result of gross negligence, wanton
28 conduct, or intentional wrongdoing that would otherwise be
29 actionable.

30 (5) The name or names and address or addresses of any assistant treasurers
31 appointed by the treasurer. Such assistant treasurers shall be authorized
32 to act in the name of the treasurer, who shall be fully responsible for
33 any act or acts committed by an assistant treasurer, and the treasurer
34 shall be fully liable for any violation of this Article committed by any
35 assistant treasurer.

36 (6) Any other information which might be requested by the Board that
37 deals with the legal expense fund organization.

38 (b) Any change in information previously submitted in a statement of
39 organization shall be reported to the Board within 10 calendar days following the
40 change.

41 **"§ 163-278.310. Quarterly report.**

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

1 (1) Contributions. – The name and complete mailing address of each
2 contributor, the amount of the contribution, the principal occupation of
3 the contributor, and the date the contribution was received. The total
4 sum of all contributions to date shall also be plainly exhibited. The
5 treasurer is not required to report the name of any contributor making a
6 total contribution of fifty dollars (\$50.00) or less in a calendar quarter,
7 but shall instead report the fact that the treasurer has received a total
8 contribution of fifty dollars (\$50.00) or less, the amount of the
9 contribution, and the date of receipt.

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

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

27 **“§§ 163-278.311 through 163-278.315: Reserved for future codification purposes.**

28 **“§ 163-278.316. Limitations on contributions.**

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

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

40 (c) For any contribution made by credit card, the credit card account number of a
41 contributor is not a public record.

42 (d) No legal expense fund or its treasurer shall accept any contribution made by
43 any corporation, labor union, insurance company, professional association, or other
44 business entity, regardless of whether such corporation does business in the State of

1 North Carolina. This section does not apply with regard to entities permitted to make
2 contributions by G.S. 163-278.19(f). Contributions shall be limited to four thousand
3 dollars (\$4,000) per person per year.

4 **"§§ 163-278.317 through 163-278.319: Reserved for future codification purposes.**

5 **"§ 163-278.320. Permitted uses of legal expense funds.**

6 (a) A legal expense fund may be used for reasonable expenses actually incurred
7 by the elected officer in relation to a legal action or potential legal action brought by or
8 against the elected officer in that elected officer's official capacity.

9 (b) Upon completion of the legal action or potential legal action, the remaining
10 monies in the legal expense fund shall be distributed to any of the following:

11 (1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter
12 7A of the General Statutes.

13 (2) The North Carolina State Bar for the provision of civil legal services
14 for indigents.

15 (3) Contributions to an organization described in section 170(c) of the
16 Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the
17 candidate or the candidate's spouse, children, parents, brothers, or
18 sisters are not employed by the organization.

19 (4) To return all or a portion of a contribution to the contributor.

20 (5) Payment to the Escheat Fund established by Chapter 116B of the
21 General Statutes.

22 **"§§ 163-278.321 through 163-278.329: Reserved for future codification purposes."**

23 **SECTION 2.** G.S. 163-278.22(7) reads as rewritten:

24 "(7) To make investigations to the extent the Board deems necessary with
25 respect to statements filed under the provisions of this Article and with
26 respect to alleged failures to file any statement required under the
27 provisions of this ~~Article~~, Article or Article 22M and, upon complaint
28 under oath by any registered voter, with respect to alleged violations of
29 any part of this ~~Article~~. Article or Article 22M."

30 **SECTION 3.** G.S. 163-278.22(8) reads as rewritten:

31 "(8) After investigation, to report apparent violations by candidates,
32 political committees, referendum committees, legal expense funds,
33 individuals or persons to the proper district attorney as provided in
34 G.S. 163-278.27."

35 **SECTION 4.** G.S. 163-278.36 is repealed.

36 **SECTION 5.** This act becomes effective January 1, 2008.