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Short Title: Legal Expense Funds.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO REGULATE LEGAL EXPENSE FUNDS OF ELECTED OFFICERS TO
PROVIDE FOR DISCLOSURE OF CONTRIBUTIONS AND EXPENDITURES.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 163 of the General Statutes is
amended to add a new Article to read:

"Article 22M.

"Legal Expense Funds.

"§ 163-278.300. Definitions.

As used in this Article, the following terms mean:

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

(2) Contribution. – As defined in G.S. 163-278.6. The term "contribution"
does not include either of the following:

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

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

(3) Elected officer. – Any individual serving in or seeking a public office.
An individual is seeking a public office when that individual has filed
any notice, petition, or other document required by law or local act as a
condition of election to public office. An individual continues to be an
elected officer for purposes of this Article as long as a legal action
commenced while the individual was an elected officer continues. If a

1 legal action is commenced after an individual ceases to serve in or
2 seek public office but the legal action concerns subject matter in the
3 individual's official capacity as an elected officer, for purposes of this
4 Article, that individual is an elected officer as long as that legal action
5 continues.

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

7 (5) Legal action. – A formal dispute in a judicial, legislative, or
8 administrative forum, including but not limited to, a civil or criminal
9 action filed in a court, a complaint or protest filed with a board of
10 elections, an election contest filed under Article 3 of Chapter 120 of
11 the General Statutes or G.S. 163-182.13A, or a complaint filed with
12 the State Ethics Commission or Legislative Ethics Committee. The
13 term "legal action" also includes investigations made or conducted
14 before the commencement of any formal proceedings.

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

18 (7) Official capacity. – Related to or resulting from the campaign for
19 public office or related to or resulting from holding public office.
20 "Official capacity" is not limited to "scope and course of employment"
21 as used in G.S. 143-300.3.

22 (8) Public office. – As defined in G.S. 163-278.6.

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

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

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

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

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

35 (b) This section does not prohibit an elected officer from funding a legal action
36 or potential legal action from a candidate campaign committee or other campaign
37 account created under Article 22A of this Chapter, or from a combination of funds from
38 an Article 22A account and from a legal expense fund, as long as that funding from the
39 Article 22A account is permitted in G.S. 163-278.16B.

40 (c) This section shall not apply to any contribution to the State or any of its
41 political subdivisions.

42 (d) The legal expense fund shall comply with all provisions of this Article.

43 (e) If an elected officer funds legal actions entirely from that elected officer's
44 own contributions or the contributions of the elected officer's spouse, parents, brothers,

1 or sisters, that elected officer is not required to create a legal expense fund. If a legal
2 expense fund accepts contributions as described in subsection (a) of this section, that
3 legal expense fund shall report the elected officer's own contributions and those of those
4 family members along with the other contributions in accordance with
5 G.S. 163-278.310.

6 (f) Contractual arrangements, including liability insurance, or commercial
7 relationships or arrangements made in the normal course of business if not made for the
8 purpose of lobbying, are not "contributions" for purposes of this Article. Use of such
9 contractual arrangements to fund legal actions does not by itself require the elected
10 officer to create a legal expense fund. If a legal expense fund has been created pursuant
11 to subsection (a) of this section, such contractual arrangements shall be reported as
12 expenditures.

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

14 **§§ 163-278.302 through 163-278.305: Reserved for future codification purposes.**

15 **§ 163-278.306. Treasurer.**

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

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

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

25 **§ 163-278.307. Detailed accounts to be kept by treasurer.**

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

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

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

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

41 **§ 163-278.308. Reports filed with Board.**

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

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

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

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

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

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

13 (e) Any statement required to be filed under this Article shall be signed and
14 certified as true and correct by the treasurer and shall be certified as true and correct to
15 the best of the treasurer's knowledge. The elected officer creating the legal expense
16 fund, or the other individual or group of individuals creating the legal expense fund on
17 the elected officer's behalf, shall certify as true and correct to the best of their
18 knowledge the organizational report and appointment of the treasurer. A certification
19 under this Article shall be treated as under oath, and any individual making a
20 certification under this Article knowing the information to be untrue is guilty of a Class
21 I felony.

22 **"§ 163-278.309. Organizational report.**

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

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

26 (2) The names, addresses, and relationships of affiliated or connected
27 elected officers, candidates, political committees, referendum
28 committees, political parties, or similar organizations.

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

31 (4) A listing of all banks, safety deposit boxes, or other depositories used,
32 including the names and numbers of all accounts maintained and the
33 numbers of all such safety deposit boxes used. The Board shall keep
34 any account number required by this Article confidential except as
35 necessary to conduct an audit or investigation, except as required by a
36 court of competent jurisdiction, or except as confidentiality is waived
37 by the treasurer. Disclosure of an account number in violation of this
38 subdivision shall not give rise to a civil cause of action. This limitation
39 of liability does not apply to the disclosure of account numbers in
40 violation of this subdivision as a result of gross negligence, wanton
41 conduct, or intentional wrongdoing that would otherwise be
42 actionable.

43 (5) The name or names and address or addresses of any assistant treasurers
44 appointed by the treasurer. Such assistant treasurers shall be authorized

1 to act in the name of the treasurer, who shall be fully responsible for
2 any act or acts committed by an assistant treasurer, and the treasurer
3 shall be fully liable for any violation of this Article committed by any
4 assistant treasurer.

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

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

10 **"§ 163-278.310. Quarterly report.**

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

13 (1) Contributions. – The name and complete mailing address of each
14 contributor, the amount of the contribution, the principal occupation of
15 the contributor, and the date the contribution was received. The total
16 sum of all contributions to date shall also be plainly exhibited. The
17 treasurer is not required to report the name of any contributor making a
18 total contribution of fifty dollars (\$50.00) or less in a calendar quarter,
19 but shall instead report the fact that the treasurer has received a total
20 contribution of fifty dollars (\$50.00) or less, the amount of the
21 contribution, and the date of receipt.

22 (2) Expenditures. – A list of all expenditures made by or on behalf of the
23 legal expense fund. The report shall list the name and complete
24 mailing address of each payee, the amount paid, the purpose, and the
25 date such payment was made. The total sum of all expenditures to date
26 shall also be plainly exhibited. The payee shall be the entity to whom
27 the legal expense fund is obligated to make the expenditure. If the
28 expenditure is to a financial institution for revolving credit or a
29 reimbursement for a payment to a financial institution for revolving
30 credit, the statement shall also include a specific itemization of the
31 goods and services purchased with the revolving credit. If the
32 obligation is for more than one good or service, the statement shall
33 include a specific itemization of the obligation so as to provide a
34 reasonable understanding of the obligation.

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

39 **"§§ 163-278.311 through 163-278.315: Reserved for future codification purposes.**

40 **"§ 163-278.316. Limitations on contributions.**

41 (a) No entity shall make, and no treasurer shall accept, any monetary
42 contribution in excess of fifty dollars (\$50.00) unless such contribution is in the form of
43 a check, draft, money order, credit card charge, debit, or other noncash method that can
44 be subject to written verification. No contribution in the form of check, draft, money

1 order, credit card charge, debit, or other noncash method may be made or accepted
2 unless it contains a specific designation of the intended contributee chosen by the
3 contributor.

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

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

10 (d) No contribution to a legal expense fund shall be permitted that would be a
11 violation of G.S. 163-278.13B or G.S. 120-302 if made to a candidate or political
12 committee.

13 **"§§ 163-278.317 through 163-278.319: Reserved for future codification purposes.**

14 **"§ 163-278.320. Permitted uses of legal expense funds.**

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

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

20 (1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter
21 7A of the General Statutes.

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

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

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

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

31 **"§§ 163-278.321 through 163-278.329: Reserved for future codification purposes."**

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

33 "(7) To make investigations to the extent the Board deems necessary with
34 respect to statements filed under the provisions of this Article and with
35 respect to alleged failures to file any statement required under the
36 provisions of this ~~Article~~, Article or Article 22M of the General
37 Statutes and, upon complaint under oath by any registered voter, with
38 respect to alleged violations of any part of this ~~Article~~, Article or
39 Article 22M of the General Statutes."

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

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

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

2 **SECTION 5.** G.S. 163-278.5 reads as rewritten:

3 "**§ 163-278.5. Scope of Article; severability.**

4 The provisions of this Article apply to primaries and elections for North Carolina
5 offices and to North Carolina referenda and do not apply to primaries and elections for
6 federal offices or offices in other States or to non-North Carolina referenda. Any
7 provision in this Article that regulates a non-North Carolina entity does so only to the
8 extent that the entity's actions affect elections for North Carolina offices or North
9 Carolina referenda.

10 The provisions of this Article are severable. If any provision is held invalid by a
11 court of competent jurisdiction, the invalidity does not affect other provisions of the
12 Article that can be given effect without the invalid provision.

13 This section applies to Articles 22B, 22D, 22E, ~~and 22F~~ 22F, 22G, 22H, and 22M of
14 the General Statutes to the same extent that it applies to this Article."

15 **SECTION 6.** G.S. 163-278.23 reads as rewritten:

16 "**§ 163-278.23. Duties of Executive Director of Board.**

17 The Executive Director of the Board shall inspect or cause to be inspected each
18 statement filed with the Board under this Article within 30 days after the date it is filed.
19 The Executive Director shall advise, or cause to be advised, no more than 30 days and at
20 least five days before each report is due, each candidate or treasurer whose
21 organizational report has been filed, of the specific date each report is due. He shall
22 immediately notify any individual, candidate, treasurer, political committee, referendum
23 committee, media, or other entity that may be required to file a statement under this
24 Article if:

- 25 (1) It appears that the individual, candidate, treasurer, political committee,
26 referendum committee, media, or other entity has failed to file a
27 statement as required by law or that a statement filed does not conform
28 to this Article; or
29 (2) A written complaint is filed under oath with the Board by any
30 registered voter of this State alleging that a statement filed with the
31 Board does not conform to this Article or to the truth or that an
32 individual, candidate, treasurer, political committee, referendum
33 committee, media, or other entity has failed to file a statement required
34 by this Article.

35 The entity that is the subject of the complaint will be given an opportunity to
36 respond to the complaint before any action is taken requiring compliance.

37 The Executive Director of the Board of Elections shall issue written opinions to
38 candidates, the communications media, political committees, referendum committees, or
39 other entities upon request, regarding filing procedures and compliance with this
40 Article. Any such opinion so issued shall specifically refer to this paragraph. If the
41 candidate, communications media, political committees, referendum committees, or
42 other entities rely on and comply with the opinion of the Executive Director of the
43 Board of Elections, then prosecution or civil action on account of the procedure
44 followed pursuant thereto and prosecution for failure to comply with the statute

1 inconsistent with the written ruling of the Executive Director of the Board of Elections
2 issued to the candidate or committee involved shall be barred. Nothing in this paragraph
3 shall be construed to prohibit or delay the regular and timely filing of reports. The
4 Executive Director shall file all opinions issued pursuant to this section with the
5 Codifier of Rules to be published unedited in the North Carolina Register and the North
6 Carolina Administrative Code.

7 This section applies to Articles 22B, 22D, 22E, ~~and 22F~~ 22F, 22G, 22H, and 22M of
8 the General Statutes to the same extent that it applies to this Article."

9 **SECTION 7.** This act becomes effective January 1, 2008.