

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1002
Judiciary I Committee Substitute Adopted 5/22/01

Short Title: Campaign Finance Enforcement.

(Public)

Sponsors:

Referred to:

April 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN THE CAMPAIGN ENFORCEMENT AND
3 DISCLOSURE LAWS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 163-278.34 reads as rewritten:

6 "**§ 163-278.34. Filings; penalty for late filings. Civil penalties.**

7 (a) Civil Penalties for Late Filing. – Except as provided in G.S. ~~163-278.9, 163-~~
8 ~~278.9~~ and G.S. 163-278.9A, all reports, statements or other documents required by this
9 Article to be filed with the Board shall be filed either by manual delivery to or by mail
10 addressed to the Board. Timely filing shall be complete if postmarked on the day the
11 reports, statements or other documents are to be delivered to the Board. If a report,
12 statement or other document is not filed within the time required by this Article, then
13 the individual, person, media, candidate, political committee, referendum committee or
14 treasurer responsible for filing shall pay to the State Board of Elections election
15 enforcement costs and a civil late penalty as follows:

- 16 (1) Two hundred fifty dollars (\$250.00) per day for each day the filing is
17 late for a report that affects statewide elections, not to exceed a total of
18 ten thousand dollars (\$10,000); and
19 (2) Fifty dollars (\$50.00) per day for each day the filing is late for a report
20 that affects only nonstatewide elections, not to exceed a total of five
21 hundred dollars (\$500.00).

22 The State Board shall immediately notify, or cause to be notified, late filers, from which
23 reports are apparently due, by registered or certified mail, return receipt requested, of
24 the penalties under this section. The State Board of Elections may waive a late penalty if
25 it determines there is good cause for the waiver.

26 (b) Civil Penalties for Illegal Contributions. – If an individual, person, political
27 committee, referendum committee, candidate, or other entity intentionally makes or
28 accepts a contribution in violation of this Article, then that entity shall pay to the State
29 Board of Elections, in an amount to be determined by that Board, a civil penalty and the

1 costs of investigation, assessment, and collection. The civil penalty shall not exceed
2 twenty thousand dollars (\$20,000) or three times the amount of the unlawful
3 contribution or expenditure involved in the violation, whichever amount is greater. The
4 State Board of Elections may, in addition to the civil penalty, order that the amount
5 unlawfully received be paid to the State Board by check, and any money so received by
6 the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North
7 Carolina.

8 (c) Civil Remedies Other Than Penalties. – The State Board of Elections, in lieu
9 of or in addition to imposing a civil penalty under subsection (a) or (b) of this section,
10 may take one or more of the following actions with respect to a violation for which a
11 civil penalty could be imposed:

12 (1) Issue an order requiring the violator to cease and desist from the
13 violation found.

14 (2) Issue an order to cease receiving contributions and making
15 expenditures until a delinquent report has been filed and any civil
16 penalty satisfied.

17 (3) Issue an order requiring the violator to take any remedial action
18 deemed appropriate by the Board.

19 (4) Issue an order requiring the violator to file any report, statement, or
20 other information as required by this Article or the rules adopted by
21 the Board.

22 (5) Publicly reprimand the violator for the violation.

23 (d) Facts in Mitigation. – An individual or other entity notified that a penalty has
24 been assessed against it may submit an affidavit to the State Board of Elections stating
25 the facts in mitigation. The State Board of Elections may waive a civil penalty in whole
26 or in part if it determines there is good cause for the waiver.

27 ~~(a1)~~ (e) Calculation and Assessment. – The State Board shall calculate and assess
28 the amount of the civil penalty due under subsection (a) or (b) of this section and shall
29 notify the person who is assessed the civil penalty of the amount. The notice of
30 assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall
31 direct the violator either to pay the assessment or to contest the assessment within 30
32 days by filing a petition for a contested case under Article 3 of Chapter 150B of the
33 General Statutes. If a violator does not pay a civil penalty assessed by the Board within
34 30 days after it is due, the Board shall request the Attorney General to institute a civil
35 action to recover the amount of the assessment. The civil action may be brought in the
36 superior court of any county where the report was due to be filed or any county where
37 the violator resides or maintains an office. A civil action must be filed within three years
38 of the date the assessment was due. An assessment that is not contested is due when the
39 violator is served with a notice of assessment. An assessment that is contested is due at
40 the conclusion of the administrative and judicial review of the assessment. ~~Consistent~~
41 ~~with G.S. 115C 437, the State Controller~~ The State Board of Elections shall pay the
42 clear proceeds of civil penalties collected under this section to the ~~County School Fund~~

1 ~~in the county in which the person charged with the violation resides. The State~~
2 ~~Controller Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2. The State~~
3 Board of Elections shall reduce the monies collected by the enforcement costs and the
4 collection costs to determine the clear proceeds payable to the ~~County School Civil~~
5 Penalty and Forfeiture Fund. Monies set aside for the costs of enforcement and the costs
6 of collection shall be credited to accounts of the State Board of Elections.

7 ~~(b) The State Board of Elections may waive a late penalty if it determines there is~~
8 ~~reasonable cause.~~

9 (f) Notifying and Consulting With District Attorney. – Before assessing a civil
10 penalty under subsection (b) of this section or imposing a civil remedy under subsection
11 (c) of this section, the State Board of Elections shall notify and consult with the District
12 Attorney who would be responsible under G.S. 163-278.27 for bringing a criminal
13 prosecution concerning the violation."

14 **SECTION 2.** G.S. 163-278.27 reads as rewritten:

15 "**§ 163-278.27. ~~Penalty for violations; Criminal penalties; duty to report and~~**
16 **prosecute.**

17 (a) Any individual, candidate, political committee, referendum committee,
18 treasurer, person or media who violates the applicable provisions of G.S. 163-278.7,
19 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B,
20 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39,
21 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a
22 Class 2 misdemeanor. The statute of limitations shall run from the day the last report is
23 due to be filed with the appropriate board of elections for the election cycle for which
24 the violation occurred.

25 (b) Whenever the Board has knowledge of or has reason to believe there has been
26 a violation of any section of this Article, it shall report that fact, together with
27 accompanying details, to the following prosecuting authorities:

- 28 (1) In the case of a candidate for nomination or election to the State Senate
29 or State House of Representatives: report to the district attorney of the
30 prosecutorial district in which the candidate for nomination or election
31 resides;
- 32 (2) In the case of a candidate for nomination or election to the office of
33 Governor, Lieutenant Governor, Secretary of State, State Auditor,
34 State Treasurer, State Superintendent of Public Instruction, State
35 Attorney General, State Commissioner of Agriculture, State
36 Commissioner of Labor, State Commissioner of Insurance, and all
37 other State elective offices, Justice of the Supreme Court, Judge of the
38 Court of Appeals, judge of a superior court, judge of a district court,
39 and district attorney of the superior court: report to the district attorney
40 of the prosecutorial district in which Wake County is located;
- 41 (3) In the case of an individual other than a candidate, including, without
42 limitation, violations by members of political committees, referendum

1 committees or treasurers: report to the district attorney of the
2 prosecutorial district in which the individual resides; and
3 (4) In the case of a person or any group of individuals: report to the
4 district attorney or district attorneys [of] the prosecutorial district or
5 districts in which any of the officers, directors, agents, employees or
6 members of the person or group reside.

7 (c) Upon receipt of such a report from the Board, the appropriate district attorney
8 shall prosecute the individual or persons alleged to have violated a section or sections of
9 this Article.

10 (d) As a condition of probation, a sentencing judge may order that the costs
11 incurred by the State Board of Elections in investigating and aiding the prosecution of a
12 case be paid to the State Board of Elections by the defendant on such terms and
13 conditions as set by the judge."

14 **SECTION 3.** G.S. 163-278.40B reads as rewritten:

15 **"§ 163-278.40B. Campaign report; partisan election.**

16 In any city election conducted on a partisan basis in accordance with G.S.
17 163-279(a)(2) and 163-291, the following reports shall be filed in addition to the
18 organizational report:

19 (1) Thirty-five-day Report. – The treasurer shall file a report with the
20 board 35 days before the primary.

21 (1a) Pre-primary Report. – The treasurer shall file a report with the board
22 no later than the tenth day preceding each primary election.

23 (2) Pre-election Report. – The treasurer shall file a report 10 days ~~prior to~~
24 before the election, unless a second primary is held and the candidate
25 appeared on the ballot in the second primary, in which case the report
26 shall be filed 10 days before the second primary.

27 (3) Repealed by Session Laws 1985, c. 164, s. 2, effective January 1,
28 1986.

29 (4) ~~Annual Report.~~ Semiannual Reports. – If contributions are received or
30 expenditures made during any part of a calendar year, for which no
31 reports are otherwise required by this section, any and all those
32 contributions and expenditures shall be reported ~~by the last Friday in~~
33 January of the following year. on semiannual reports due on the last
34 Friday in July, covering the period through June 30, and due on the last
35 Friday in January, covering the period through December 31 of the
36 previous year."

37 **SECTION 4.** G.S. 163-278.40C reads as rewritten:

38 **"§ 163-278.40C. Campaign report; nonpartisan election and runoff.**

39 If any city election conducted under the nonpartisan election and runoff basis in
40 accordance with G.S. 163-279(a)(4) and 163-293, the following reports shall be filed in
41 addition to the organizational report:

- 1 (1) Thirty-five-day Report. – The treasurer shall file a report with the
2 board 35 days before the election.
- 3 (1a) Pre-election Report. – The treasurer shall file a report with the board
4 ~~no later than 10 days prior to~~ before the election.
- 5 (1b) Pre-runoff Report. – The treasurer shall file a report with the board 10
6 days before the runoff if the candidate is in a runoff.
- 7 (2) Repealed by Session Laws 1985, c. 164, s. 3, effective January 1,
8 1986.
- 9 (3) ~~Annual Report.~~ Semiannual Reports. – If contributions are received or
10 expenditures made during any part of a calendar year, for which no
11 reports are otherwise required by this section, any and all ~~such~~ those
12 contributions and expenditures shall be reported ~~by the last Friday in~~
13 January of the following year. on semiannual reports due on the last
14 Friday in July, covering the period through June 30, and due on the last
15 Friday in January, covering the period through December 31 of the
16 previous year."

17 SECTION 5. G.S. 163-278.40D reads as rewritten:

18 "§ 163-278.40D. Campaign report; nonpartisan primary and elections.

19 In any city election conducted under the nonpartisan primary method in accordance
20 with G.S. 163-279(a)(3) and 163-294, the following reports shall be filed in addition to
21 the organizational report:

- 22 (1) Thirty-five-day Report. – The treasurer shall file a report with the
23 board 35 days before the primary if the candidate is in a primary or the
24 same length of time before the election if the candidate is not in a
25 primary.
- 26 (1a) Pre-primary and Pre-election Report. – The treasurer shall file a report
27 10 days ~~prior to~~ before the primary if the candidate is in a primary ~~or~~
28 and 10 days prior to before the election, ~~if the candidate is not in a~~
29 primary. election.
- 30 (2) Repealed by Session laws 1985, c. 164, s. 4, effective January 1, 1986.
- 31 (3) ~~Annual Report.~~ Semiannual Reports. – If contributions are received or
32 expenditures made during any part of a calendar year, for which no
33 reports are otherwise required by this section, any and all those
34 contributions and expenditures shall be reported ~~by the last Friday in~~
35 January of the following year. on semiannual reports due on the last
36 Friday in July, covering the period through June 30, and due on the last
37 Friday in January, covering the period through December 31 of the
38 previous year."

39 SECTION 6. G.S. 163-278.40E reads as rewritten:

40 "§ 163-278.40E. Campaign report; nonpartisan plurality.

1 In any city election conducted under the nonpartisan plurality method under G.S.
2 163-279(a)(1) and 163-292, the following reports shall be filed in addition to the
3 organizational report:

4 (1) Thirty-five-day Report. – The treasurer shall file a report with the
5 board 35 days before the election.

6 (1a) Pre-election Report. – The treasurer shall file a report 10 days ~~prior to~~
7 before the election.

8 (2) Repealed by Session Laws 1985, c. 164, s. 5, effective January 1,
9 1986.

10 (3) ~~Annual Report.~~ Semiannual Reports. – If contributions are received or
11 expenditures made during any part of a calendar year, for which no
12 reports are otherwise required by this section, any and all ~~such those~~
13 contributions and expenditures shall be reported ~~by the last Friday in~~
14 January of the following year, on semiannual reports due on the last
15 Friday in July, covering the period through June 30, and due on the last
16 Friday in January, covering the period through December 31 of the
17 previous year."

18 **SECTION 7.** G.S. 163-278.9(j) reads as rewritten:

19 "(j) Treasurers for the following entities shall electronically file each report
20 required by this section that shows a cumulative total for the election cycle in excess of
21 five thousand dollars (\$5,000) in contributions, in expenditures, or in loans, according to
22 rules adopted by the State Board of Elections:

23 (1) A candidate for statewide office;

24 (2) A State, district, county, or precinct executive committee of a political
25 party, if the committee makes contributions or independent
26 expenditures in excess of five thousand dollars (\$5,000) that affect
27 contests for statewide office;

28 (3) A political committee that makes contributions in excess of five
29 thousand dollars (\$5,000) to candidates for statewide office or makes
30 independent expenditures in excess of five thousand dollars (\$5,000)
31 that affect contests for statewide office.

32 The State Board of Elections shall provide the software necessary to file an electronic
33 report to a treasurer required to file an electronic report at no cost to the treasurer."

34 **SECTION 8.** This act becomes effective January 1, 2002.