

# GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

## Legislative Fiscal Note

**BILL NUMBER:** Senate Bill 20 (Second Edition)

**SHORT TITLE:** Voter-Owned Election for Treasurer.

**SPONSOR(S):** Senator Berger of Franklin

FISCAL IMPACT					
	Yes ( )	No ( )	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
<b>REVENUES:</b>	-	-	-	-	-
<b>EXPENDITURES:</b>	See Assumptions and Methodology				
<b>POSITIONS (cumulative):</b>	See Assumptions and Methodology				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> State Board of Elections					
<b>EFFECTIVE DATE:</b> This act is effective when it becomes law.					

### BILL SUMMARY:

Senate Bill 20 (Second Edition) expands the Voter-Owned Elections Act from the three currently covered offices to include the Treasurer. The bill also clarifies which Council of State offices would be eligible to participate if the Fund is not fully funded on August 1 of the year prior to an election.

The bill also makes the following changes to the workings of the Council of State program:

1. **Write-ins.** The bill clarifies that a write-in candidate is not eligible to participate.
2. **Qualifying Contributions.** The bill makes several changes to the provisions on qualifying contributions, which must be raised from registered NC voters in amounts between \$10 and \$200:
  - **Method of Payment.** Currently, qualifying contributions may be accepted only by check or money order.
    - The bill allows acceptance by any non-cash method otherwise allowed for contributions, notable including credit cards and Pay Pal.

- Minimums. Currently, to qualify a candidate must raise qualifying contributions from at least 750 individuals, and those qualifying contributions must reach a dollar amount that is at least 25 times the filing fee for the office sought. For the Council of State offices covered in 2008, this amounted to about \$30,000.
  - The bill would change the formula to require contributions from at least 900 voters and add 100 voters to that number for every \$100,000 over \$300,000 that the candidate would be entitled to receive in grants for the office. (See below for the different grant amounts, designed to recognize that some Council of State offices cost more to run for than others.)
  - The bill changes the threshold dollar amount of qualifying contributions to equal \$20 times the minimum number of voters from whom qualifying contributions must be raise.

A candidate for an office in the lower grant range would have to raise \$18,000 from at least 900 voters.
- Maximums. Currently, the maximum of qualifying contributions that may be raised is different for a candidate with no primary than for a candidate with a contested primary. For a candidate with no primary, the maximum qualifying contributions equals 100 times the filing fee for the office, and for a candidate with a contested primary it is 200 times the filing fee for the office.
  - The bill eliminates the filing fee as a measure, as with the minimum. For a candidate with no primary, the maximum would be \$100 times the minimum number of voters from whom qualifying contributions must be received. If the candidate has a contested primary, the maximum would be \$200 times the minimum number of voters from whom qualifying contributions must be received. A candidate for an office in the lower grant range with no primary could raise no more than \$90,000 in qualifying contributions.
- No Raffles. Currently the law says that "no payment, gift, or anything of value shall be given in exchange for a qualifying contribution." An issue arose over whether a raffle ticket was something of value that could be given in exchange for a qualifying contribution. The State Board of Elections decided that raffle tickets might not be a thing of value, but that the prize would be, so the raffle idea was unworkable.
  - The bill adds that "the opportunity to win anything of value" shall not be given in exchange for a qualifying contribution.
- Multiple Contributions from Same Individual. The bill clarifies that multiple qualifying contributions from the same person can count as only one qualifying contribution, for purposes meeting the threshold. Also, the PCS provides that multiple contributions from the same nonfamily member may not exceed \$200.
- Family Contributions. Currently, the candidates themselves and their family members (spouse, parent, child, brother, sister) may each contribute up to \$1,000 to the campaign. The question arose whether such contributions may be used to meet the qualifying contribution threshold.
  - The bill states that up to \$200 of a family member's contribution may be treated as a qualifying contribution.

3. **Grants from the Fund.** Currently, no basic grant money is distributed in a primary. In the general election, the basic grant is measured by the average amount of campaign-related expenditures by all candidates who won the immediately preceding 3 general elections for that office, but not less than \$300,000.

- The bill provides that only expenditures made in the general elections will count toward that measurement. Expenditures are made in the general election if they must be reported in the 3<sup>rd</sup> or 4<sup>th</sup> quarterly reports. The results of the formula are to be rounded to the nearest \$1,000.

4. **Matching Funds.** Currently, matching funds (formerly termed "rescue funds") are available in a primary if a non-participating opponent outspends a participating candidate. This is the same as the judicial Fund: no basic grant money for a primary, only matching funds. Matching funds are triggered in a primary by opposition spending that exceeds the maximum amount a participating candidate could raise in qualifying contributions. Matching funds are triggered in the general election by opposition spending that exceeds the participating candidate's basic grant entitlement from the Fund. The opposition spending is subject to special expedited reporting so the matching fund provision could be administered. Matching funds are available in amounts matching the opposition spending, up to twice the trigger amount.

- The bill makes two changes to the law on matching funds:
  - *In the Primary.* The bill provides that matching funds are available in a primary to a certified candidate with a primary opponent or to a certified candidate who has no primary opponent but who is clearly targeted by opposition spending.
  - *No Matching Funds for All-Candidate Ads.* In 2008 in the judicial program an ad was run supporting both the candidates in one Court of Appeals race. The State Board of Elections felt compelled by the law to give both of them matching funds, which they both turned down. The bill provides that there will be no matching funds for a communication that supports all the candidates in the race or opposes all the candidates in the race.

5. **Enforcement.** Currently, both the judicial program and the Council of State program are enforced by the State Board of Elections, which has civil penalties available as remedies. For the judicial program, a statute provides for the State Board to be advised in enforcement by an Advisory Council, provides for an appeal procedure, and provides for specific State Board authority to adopt procedures and issue opinions. The Council of State program does not have that same statute. The bill imports that statute into the Council of State program, using the same Advisory Council for both programs.

6. **Voter Guide.** Currently, the Voter Guide is intended to explain the functions of the offices affected by the programs and to give space for candidates to provide information about themselves. Within each candidate's space the candidate is given 50 words to present endorsements and 150 words to make a statement.

- The bill expands the Voter Guide's coverage to all 10 offices in the Council of State, including Governor and Lieutenant Governor, which are not affected by the programs. The bill would replace the word limits of 50 for endorsements and 150 for statement with one word cap of 250 words for the candidate's entire entry, which would include

biographical information. The bill would replace permissive language for the State Board to publish the Judicial and Council of State guides together with a mandate to do so whenever possible.

7. **Assessments.** Creates a new Article 2E in Chapter 105 to provide assessments that will be credited to the Voter-Owned Election Fund. The assessments are as follows:

- A 1% surcharge on the insurance regulatory charge paid by insurance companies on each company's premium tax liability.
- A \$5 surcharge on license fees charged by the Department of Insurance under G.S. 58-33-125.
- An assessment of up to 0.08% on payments made to entities retained by the State Treasurer.
- The Treasurer must apply the assessments broadly among various entities and the total amount assessed must be at least \$750,000 but less than \$1,250,000.

*Source: Senate Finance Committee Counsel, 8/4/09*

**EFFECTIVE DATE:** This act is effective when it becomes law. The first Treasurer race that would be covered would occur in 2012.

#### **ASSUMPTIONS AND METHODOLOGY:**

According to the 2008-2009 Campaign Finance Manual issued by the Campaign Finance Office of the North Carolina State Board of Elections, there are five sources of revenue for the North Carolina Voter-Owned Elections Fund. In addition to distributions to qualified candidates, all expenses for implementation, including staff, administrative, and enforcement costs, are paid for by the North Carolina Voter-Owned Elections Fund. Revenue for the Fund is provided through the following means:

- The first source is from any voluntary donation made directly to the Voter-Owned Elections Fund. In the past, there have been few donations.
- The second source is from appropriations from the General Fund. The legislature appropriated \$1,000,000 for the 2007-2008 fiscal year and \$3,580,000 for the 2008-2009 fiscal year for the implementation of the Act. This source provides almost all the funding.
- The third source is from Fund revenues that were distributed to candidates, but were not spent or committed at the time a candidate is no longer considered a certified candidate for that election. This source produces little funding.
- The fourth source is any funds ordered to be returned to the Fund as a result of a violation by a participating or certified candidate in the Program. This source produces little funding.
- The fifth source is from money paid to the Fund as a result of a candidate forfeiting funds in excess of the \$20,000 cap on contributions and expenditures between August 1<sup>st</sup> of the year before the election and the date of declaring a candidate's intent to participate in the Program. This source produces little funding.

The State Board of Elections is responsible for administering the Fund, including the development of procedures for the proper administration of the Program. The Board will make determinations regarding whether electioneering communications will trigger matching funds and will be

responsible for making determinations of violations of Article 22J of Chapter 163 of the General Statutes, the provisions creating the Program.

The Board has delegated the daily administration of the Fund to the Campaign Finance Division of the State Board of Elections. Under the direction of the Board, the Campaign Finance Division will audit all reports of both non-participating and participating candidates to ensure compliance with the provisions of the Program. Certification requirements will be verified by Campaign Finance staff prior to the Board certifying a candidate.

G.S. 163-278.99 outlines the method employed by the State Board of Elections, in consultation with the State Treasurer and the State Controller, to determine how the Fund is distributed among certified candidates. In the chart below, the left column provides the name of the particular seat on the Council of State, the average over the last three elections regarding the particular seat as addressed in G.S. 163-278.99(b)(4), and the funding for the certified candidate as mentioned in the same statute under G.S. 163-278.99(c).

<b>Council of State seat</b>	<b>Average over last three elections (rounded per statute)</b>	<b>Amount certified candidate would receive</b>
Secretary of State	\$198,000	\$300,000
Attorney General	\$1,759,000	\$1,759,000
Treasurer	\$1,064,000	\$1,064,000
Commissioner of Agriculture	\$365,000	\$365,000
Commissioner of Labor	\$150,000	\$300,000
State Auditor	\$135,000	\$300,000
Commissioner of Insurance	\$280,000	\$300,000
Supt. Of Public Instruction	\$161,000	\$300,000

Due to a number of variables, the State Board of Elections is not able to determine the fiscal impact of Senate Bill 20. In any election, there are unknowns that affect the cost of the particular election. Typically, the work load for the State Board of Election is impacted by the number of candidates who file for a particular vacancy, as well as by the necessary review and auditing of candidates who submit information to qualify to receive distributions from the Voter-Owned Election Fund. Therefore, the Board does anticipate that the proposed legislation will increase their work load, and thus, could require more personnel. However, at this time, the Board is not able to estimate how many positions may be needed.

**SOURCES OF DATA:** North Carolina State Board of Elections

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** August 5, 2009



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