

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1128 (Second Edition)

SHORT TITLE: Campaign Finance Amendments.

SPONSOR(S): Representatives Ross and Moore

| FISCAL IMPACT | | | | |
|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------------|-------------------------------------|
| | Yes (X) | No () | No Estimate Available () | |
| | <u>FY 2005-06</u> | <u>FY 2006-07</u> | <u>FY 2007-08</u> | <u>FY 2008-09</u> <u>FY 2009-10</u> |
| REVENUES | | | | |
| EXPENDITURES | Up to \$4,000/See Assumptions and Methodology | | | |
| POSITIONS (cumulative): | | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: | State Board of Elections | | | |
| EFFECTIVE DATE: | The bill is effective July 1, 2005 and applies to contributions and expenditures made or accepted on or after that date. | | | |

BILL SUMMARY ¹: This bill makes several changes to the campaign finance laws. The changes are based on proposals made by the staff of the State Board of Elections.

Section 1. Training for Treasurers. Current law requires that all treasurers of referendum committees must receive training from the State Board of Elections. The law specifically says the training must include instruction that referendum committees that have received corporate or union contributions may not in turn contribute to political committees or candidates. The bill provides that political committee treasurers must receive State Board training, unless the treasurer has already received State Board training or unless the treasurer is the candidate.

Section 2. Audit Trail for Contribution by Money Order. Current law allows contributions to be made in the form of "a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification." The bill directs the State Board to prescribe methods to ensure an audit trail for contributions by money order so that the identity of the contributor can be determined.

¹ Taken from Bill Analysis prepared by Co-Counsel for House Election Laws Committee.
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Sections 3 and 4. Payment of Expenses by "Any Verifiable Form." Current law says a campaign must pay all media expenses and all other expenses over \$50 by check only. The bill says the expenses now payable only by check may be paid by "a verifiable form of payment." Mirroring the language about money orders, this section directs the State Board to prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined.

Section 5. Uncollected Debt Deemed Contribution. Current law defines a "contribution" to include many forms of gift, including a loan and the in-kind provision of goods or services for free. Campaigns will purchase goods or services and won't always have the money to pay up front. This section of the bill amends the definition of "contribution" to include a debt to pay an expenditure that has been uncollected beyond the 3-year statute of limitations on a lawsuit to collect the debt. The bill also provides that no criminal or civil penalty will attach without evidence that the debtor intended to accept a contribution or the creditor intended to make one, and that the contribution is otherwise illegal.

Section 6. Runoff and Vacancy Election as "an election" for the \$4,000 Limit. Current law sets the limit on contributions at \$4,000 per donor per donee per an election. For purposes of that limit, "an election" is defined as a primary, a second primary, or a general election in which the candidate or political committee is involved. So, a candidate may receive from the same donor \$4,000 for the primary, another \$4,000 for the second primary (but only if the candidate is on the ballot), and another \$4,000 for the general election. This section of the bill adds runoff and vacancy election to the definition of "an election," thereby allowing a contributor to give a candidate \$4,000 for each.

Sections 7 through 10. Debugging the Judicial Campaign Act. In 2002 the General Assembly established the Public Campaign Financing Fund to support campaigns of candidates for Supreme Court and Court of Appeals who agree to certain limitation on contributions and expenditures. The new system was first implemented in the 2004 election. These sections are the result of bugs the State Board, and judicial candidates, found in that initial implementation.

Section 7. Eligibility for Certification to Receive Funds. Current law says that to certify a candidate to receive funds, the State Board must determine whether a candidate meets certain criteria including whether the candidate is "qualified to receive votes on the ballot as a candidate for the office." The State Board, and judicial candidates, were uncertain what that language meant: This section specifies that it means the person must have filed a notice of candidacy. (The section also cleans up some language left over from an early draft of the act.)

Section 8. What a Candidate May Raise and Spend During Qualifying Period. After a candidate is certified and the date of the nonpartisan primary (which marks the end of the qualifying period), it is clear that a candidate may spend only money received from the public Fund plus any money leftover from the qualifying period. But the State Board, and some judicial candidates, found the law unclear as to what could be raised and spent during the period that begins when the candidate files a declaration of intent to participate in the program and ends on primary day, when the

qualifying period ends. This section rewrites the law to make clear that from the declaration of intent to the primary day, a candidate may accept in contributions only:

- Qualifying contributions.
- Contributions under \$10 from NC voters.
- Personal and family contributions of \$1,000 per person.

Those contributions may not exceed the maximum amount a candidate may receive in qualifying contributions. In addition to those contributions, during this period a candidate may spend only:

- Leftover money of that raised from September 1 before the election year through the filing of intent. During that time a candidate may raise up to \$10,000 from any otherwise legal source without foreclosing the chance to be certified under the Fund.
- Any rescue funds triggered by spending by the opponents.

Section 8 also provides, reflecting Section 5 of the bill, that debt by a candidate for a campaign expenditure counts toward the candidate's \$1,000 limit over contributing to his or her own campaign. (See also Section 10, concerning a candidate's use of a credit card.)

Section 9. Timing of Voter Guide Distribution. Current law calls for the State Board to distribute to as many voters as possible a Voter Guide telling about the nonpartisan candidates for Supreme Court and Court of Appeals. It says this must be done no more than 28 days and no fewer than 7 days before the election. In 2004, many people received the guides after they had already voted during the one-stop (early voting) period, which begins 20 days before the election. This section would change the distribution dates to no more than 14 days and no fewer than 7 days before the beginning of the early voting period.

Section 10. Use of Credit Card by Candidate. Current law limits the candidate to a \$1,000 contribution to his or her own campaign. This section amends the definition of "expenditure" to add "incur an obligation to pay an expenditure," making clear that paying a campaign bill with a credit card comes under the definition of "expenditure" and the \$1,000 limit on candidates making such in-kind contributions to their own campaigns. (Although this section amends the definition of "expenditure" that applies to all campaigns, appellate judicial campaigns are the only ones that have any dollar limit on candidates contributing to their own campaigns.)

Sections 11 and 12. Applying Scope and Opinion Provisions to All Campaign Finance Articles. Current law has provisions that limit the scope of Article 22A, the main campaign finance act, to elections to State and local offices in North Carolina and that give the Executive Director of the State Board the duty to provide written opinions about whether an inquired-about practice complies with Article 22A. If a person receives such an opinion and complies with it, that person cannot be prosecuted for an Article 22A violation. In addition to Article 22A, four other Articles in Chapter 163 regulate campaign finance:

- 22B The Political Parties Financing Fund.
- 22D The Public Campaign Financing Act (for Supreme Court and Court of Appeals).
- 22E Electioneering Communications on television and radio.
- 22F Electioneering Communications through mass mailings and phone banks.

These sections apply the scope and written opinion statutes to the other four Articles as well as to 22A.

Section 13. Reporting Contributions for Electioneering Communications. In 2004 the General Assembly prohibited the use of corporate or union money for an "electioneering communication," a message sent 30 days before a primary or 60 days before a general election where the message targets the relevant electorate through radio, television, mass mailing, or phone bank and where the message refers to a candidate for statewide office or General Assembly. That act, patterned after the federal McCain-Feingold Act, also requires an organization doing electioneering communications to report contributions and expenditures for them. During its initial implementation of the act in 2004, the State Board staff found that one national organization used the wording of the act to argue that it was not required to report contributions to a separate segregated fund. Instead the organization insisted it was only required to make a large, unrevealing report of contributions from all over the nation. This section clarifies that if an organization makes electioneering communications, it must pay for them out of a separate segregated account into which goes only money from legally acceptable sources, and it must report contributions to and spending from that fund.

ASSUMPTIONS AND METHODOLOGY:

As outlined in the bill summary, this bill makes several substantive and/or clarifying changes to the campaign finance laws. However, the State Board of Elections estimates that the only significant cost that it would incur from the implementation of this bill would result from the mandatory treasurer training required by Section 1 of the bill.

Under current law all treasurers of referendum committee must receive training from the State Board of Elections. Section 1 provides that political committee treasurers must receive training from the State Board as well unless the treasurer had already received State Board training or unless the treasurer is the candidate. The State Board estimates that it will conduct between six and eight training sessions regionally each year. The estimated costs associated with these trainings, including facility preparation, travel and subsistence expenses, is approximately \$300-\$500 each. The cost for conducting the sessions could range from \$1,800 to \$4,000 annually. However, the State Board intends to coordinate these training sessions for the political committee treasurers with other training events conducted for county boards of elections in an effort to minimize costs. Therefore, the additional financial resources needed could be significantly less.

SOURCES OF DATA: State Board of Elections

TECHNICAL CONSIDERATIONS: None

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