

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS75360-RR-37 (03/13)

Short Title: Campaign Report Random Audits. (Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT
RANDOM AUDITS OF CAMPAIGN REPORTS; TO PROVIDE FOR CIVIL
PENALTIES FOR WILLFUL CONCEALMENT THROUGH LATE FILING;
AND TO MAKE A TECHNICAL CORRECTION TO THE CRIMINAL
PENALTY FOR KNOWINGLY SIGNING A FALSE CAMPAIGN REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.22 reads as rewritten:

"§ 163-278.22. Duties of State Board.

It shall be the duty and power of the State Board:

- (1) To prescribe forms of statements and other information required to be filed by this Article, to furnish such forms to the county boards of elections and individuals, media or others required to file such statements and information, and to prepare, publish and distribute or cause to be distributed to all candidates at the time they file notices of candidacy a manual setting forth the provisions of this Article and a prescribed uniform system for accounts required to file statements by this Article.
- (2) To accept and file any information voluntarily supplied that exceeds the requirements of this Article.
- (3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this Article.
- (4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of copying.
- (5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural

1 Resources, Office of Archives and History, and shall be preserved for
2 a period of 10 years.

3 (6) To prepare and publish such reports as it may deem appropriate.

4 (7) To make investigations to the extent the Board deems necessary ~~with~~
5 ~~respect to statements filed~~ under the provisions of this Article and with
6 respect to alleged failures to file any statement required under the
7 provisions of this Article, and, upon complaint under oath by any
8 registered voter, with respect to alleged violations of any part of this
9 Article.

10 (8) After investigation, to report apparent violations by candidates,
11 political committees, referendum committees, legal assistance funds,
12 individuals or persons to the proper district attorney as provided in
13 G.S. 163-278.27.

14 (9) To prescribe and furnish forms of statements and other material to the
15 county boards of elections for distribution to candidates and
16 committees required to be filed with the county boards.

17 (10) To instruct the chairman and director of elections of each county board
18 as to their respective duties and responsibilities relative to the
19 administration of this Article.

20 (11) To require appropriate certification of delinquent or late filings from
21 the county boards of elections and to execute the same responsibilities
22 relative to such reports as provided in G.S. 163-278.27.

23 (12) To assist county boards of elections in resolving questions arising from
24 the administration of this Article.

25 (13) To require county boards of elections to hold such hearings, make such
26 investigations, and make reports to the State Board as the State Board
27 deems necessary in the administration of this Article.

28 (14) To calculate, assess, and collect civil penalties pursuant to this Article.

29 (15) To conduct random audits of candidates, political committees,
30 referendum committees, and legal assistance funds. The State Board
31 shall adopt rules to ensure random selection from all committees and
32 funds, including those reporting to county boards."

33 **SECTION 2.** G.S. 163-278.34 reads as rewritten:

34 **"§ 163-278.34. Civil penalties.**

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

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

7 If the form is filed by mail, no civil late penalty shall be assessed for any day after
8 the date of postmark. No civil late penalty shall be assessed for any day when the Board
9 office at which the report is due is closed. The State Board shall immediately notify, or
10 cause to be notified, late filers, from which reports are apparently due, by mail, of the
11 penalties under this section. The State Board of Elections may waive a late penalty if it
12 determines there is good cause for the waiver.

13 If the Board determines by clear and convincing evidence that the late filing
14 constitutes a willful attempt to conceal contributions or expenditures, the Board may
15 assess a civil penalty in an amount to be determined by that Board, plus the costs of
16 investigation, assessment, and collection. The civil penalty shall not exceed three times
17 the amount of the contributions and expenditures willfully attempted to be concealed.

18 (b) Civil Penalties for Illegal Contributions. – If an individual, person, political
19 committee, referendum committee, candidate, or other entity intentionally makes or
20 accepts a contribution in violation of this Article, then that entity shall pay to the State
21 Board of Elections, in an amount to be determined by that Board, a civil penalty and the
22 costs of investigation, assessment, and collection. The civil penalty shall not exceed
23 three times the amount of the unlawful contribution or expenditure involved in the
24 violation. The State Board of Elections may, in addition to the civil penalty, order that
25 the amount unlawfully received be paid to the State Board by check, and any money so
26 received by the State Board shall be deposited in the Civil Penalty and Forfeiture Fund
27 of North Carolina.

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

- 32 (1) Issue an order requiring the violator to cease and desist from the
33 violation found.
- 34 (2) Issue an order to cease receiving contributions and making
35 expenditures until a delinquent report has been filed and any civil
36 penalty satisfied.
- 37 (3) Issue an order requiring the violator to take any remedial action
38 deemed appropriate by the Board.
- 39 (4) Issue an order requiring the violator to file any report, statement, or
40 other information as required by this Article or the rules adopted by
41 the Board.
- 42 (5) Publicly reprimand the violator for the violation.

43 (d) Facts in Mitigation. – An individual or other entity notified that a penalty has
44 been assessed against it may submit an affidavit to the State Board of Elections stating

1 the facts in mitigation. The State Board of Elections may waive a civil penalty in whole
2 or in part if it determines there is good cause for the waiver.

3 (e) Calculation and Assessment. – The State Board shall calculate and assess the
4 amount of the civil penalty due under subsection (a) or (b) of this section and shall
5 notify the person who is assessed the civil penalty of the amount. The notice of
6 assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall
7 direct the violator either to pay the assessment or to contest the assessment within 30
8 days by filing a petition for a contested case under Article 3 of Chapter 150B of the
9 General Statutes. If a violator does not pay a civil penalty assessed by the Board within
10 30 days after it is due, the Board shall request the Attorney General to institute a civil
11 action to recover the amount of the assessment. The civil action may be brought in the
12 superior court of any county where the report was due to be filed or any county where
13 the violator resides or maintains an office. A civil action must be filed within three years
14 of the date the assessment was due. An assessment that is not contested is due when the
15 violator is served with a notice of assessment. An assessment that is contested is due at
16 the conclusion of the administrative and judicial review of the assessment. The State
17 Board of Elections shall pay the clear proceeds of civil penalties collected under this
18 section to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2. The State
19 Board of Elections shall reduce the monies collected by the enforcement costs and the
20 collection costs to determine the clear proceeds payable to the Civil Penalty and
21 Forfeiture Fund. Monies set aside for the costs of enforcement and the costs of
22 collection shall be credited to accounts of the State Board of Elections.

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

28 **SECTION 3.** G.S. 163-278.32 reads as rewritten:

29 **"§ 163-278.32. Statements under oath.**

30 Any statement required to be filed under this Article shall be signed and certified as
31 true and correct by the individual, media, candidate, treasurer or others required to file
32 it, and shall be certified as true and correct to the best of the knowledge of the
33 individual, media, candidate, treasurer or others filing the statement; provided further
34 that the candidate shall certify as true and correct to the best of his knowledge the
35 organizational report and appointment of treasurer filed for the candidate or the
36 candidate's principal campaign committee. ~~Any~~ A certification under this Article shall
37 be treated as under oath, and any person making a certification under this Article
38 knowing the information to be untrue may be prosecuted for perjury under G.S. 14-209.
39 is guilty of a Class F felony."

40 **SECTION 4.** There is appropriated from the General Fund to the State
41 Board of Elections for the 2007-2008 fiscal year the sum of one million dollars
42 (\$1,000,000) for the implementation of this act.

43 **SECTION 5.** This act becomes effective January 1, 2008, and applies to all
44 reports due or filed on and after that date.