

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

1

SENATE BILL 539

Short Title: Public Campaign Fund Amendments. (Public)

Sponsors: Senators Clodfelter; and Kinnaird.

Referred to: Judiciary I.

March 15, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS CONCERNING THE NORTH CAROLINA
3 PUBLIC CAMPAIGN FUND.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 84-34 reads as rewritten:

6 "§ 84-34. **Membership fees and list of members.**

7 Every active member of the North Carolina State Bar shall, prior to the first day of
8 July of each year, pay to the secretary-treasurer an annual membership fee in an amount
9 determined by the Council but not to exceed two hundred dollars (\$200.00), plus a
10 surcharge of fifty dollars (\$50.00) for the implementation of Article 22D of Chapter 163
11 of the General Statutes, and every member shall notify the secretary-treasurer of the
12 member's correct mailing address. Any member who fails to pay the required dues by
13 the last day of June of each year shall be subject to a late fee in an amount determined
14 by the Council but not to exceed thirty dollars (\$30.00). All dues for prior years shall be
15 as were set forth in the General Statutes then in effect. The membership fee shall be
16 regarded as a service charge for the maintenance of the several services authorized by
17 this Article, and shall be in addition to all fees required in connection with admissions to
18 practice, and in addition to all license taxes required by law. The fee shall not be
19 prorated: Provided, that no fee shall be required of an attorney licensed after this Article
20 shall have gone into effect until the first day of January of the calendar year following
21 that in which the attorney was licensed; but this proviso shall not apply to attorneys
22 from other states admitted on certificate. The fees shall be disbursed by the
23 secretary-treasurer on the order of the Council. The fifty-dollar (\$50.00) surcharge shall
24 be sent on a monthly schedule to the State Board of Elections. The secretary-treasurer
25 shall annually, at a time and in a law magazine or daily newspaper to be prescribed by
26 the Council, publish an account of the financial transactions of the Council in a form to
27 be prescribed by it. The secretary-treasurer shall compile and keep currently correct
28 from the names and mailing addresses forwarded to the secretary-treasurer and from any
29 other available sources of information a list of members of the North Carolina State Bar

1 and furnish to the clerk of the superior court in each county, not later than the first day
2 of October in each year, a list showing the name and address of each attorney for that
3 county who has not complied with the provisions of this Article. The name of each of
4 the active members who are in arrears in the payment of membership fees shall be
5 furnished to the presiding judge at the next term of the superior court after the first day
6 of October of each year, by the clerk of the superior court of each county wherein the
7 member or members reside, and the court shall thereupon take action that is necessary
8 and proper. The names and addresses of attorneys so certified shall be kept available to
9 the public. The Secretary of Revenue is hereby directed to supply the
10 secretary-treasurer, from records of license tax payments, with any information for
11 which the secretary-treasurer may call in order to enable the secretary-treasurer to
12 comply with this requirement.

13 The list submitted to several clerks of the superior court shall also be submitted to
14 the Council at its October meeting of each year and it shall take the action thereon that
15 is necessary and proper."

16 **SECTION 2.** G.S. 105-41(a)(1) reads as rewritten:

17 "(1) An attorney-at-law. ~~In addition to the tax, whenever an attorney pays~~
18 ~~the tax, the Department must give that attorney an opportunity to make~~
19 ~~a contribution of fifty dollars (\$50.00) to support the North Carolina~~
20 ~~Public Campaign Financing Fund established by G.S. 163-278.63.~~
21 ~~Payment of the contribution is not required and is not considered part~~
22 ~~of the tax owed."~~

23 **SECTION 3.** G.S. 163-278.63(b) reads as rewritten:

24 "(b) Sources of Funding. – Money received from all the following sources must be
25 deposited in the Fund:

- 26 (1) Money from the North Carolina Candidates Financing Fund.
27 (2) Designations made to the Public Campaign ~~Financing~~ Fund by
28 individual taxpayers pursuant to G.S. 105-159.2.
29 ~~(3) Any contributions made by attorneys in accordance with G.S. 105-41.~~
30 (4) Public Campaign ~~Financing~~ Fund revenues distributed for an election
31 that remain unspent or uncommitted at the time the recipient is no
32 longer a certified candidate in the election.
33 (5) Money ordered returned to the Public Campaign ~~Financing~~ Fund in
34 accordance with G.S. 163-278.70.
35 (6) Voluntary donations made directly to the Public Campaign ~~Financing~~
36 Fund. Corporations, other business entities, labor unions, and
37 professional associations may make donations to the Fund.
38 (7) Money collected from the fifty-dollar (\$50.00) surcharge on attorney
39 membership fees in G.S. 84-34."

40 **SECTION 4.** G.S. 163-278.64(c) reads as rewritten:

41 "(c) Certification of Candidates. – Upon receipt of a submittal of the record of
42 demonstrated support by a participating candidate, the Board shall determine whether or
43 not the candidate has complied with all the following ~~requirements, if they apply to that~~
44 candidate: requirements:

- 1 (1) Signed and filed a declaration of intent to participate in this Article.
- 2 (2) Submitted a report itemizing the appropriate number of qualifying
3 contributions received from registered voters, which the Board shall
4 verify through a random sample or other means it adopts. The report
5 shall include the county of residence of each registered voter listed.
- 6 (3) ~~Qualified to receive votes on the ballot as a candidate for the~~
7 ~~office.~~Filed a notice of candidacy pursuant to G.S. 163-323.
- 8 (4) Otherwise met the requirements for participation in this Article.

9 The Board shall certify candidates complying with the requirements of this section
10 as soon as possible and no later than five business days after receipt of a satisfactory
11 record of demonstrated support."

12 **SECTION 5.** G.S. 163-278.64(d) reads as rewritten:

13 "(d) Restrictions on Contributions and Expenditures for Participating and Certified
14 Candidates. – The following restrictions shall apply to contributions and expenditures
15 with respect to participating and certified candidates:

- 16 (1) Beginning January 1 of the year before the election and before the
17 filing of a declaration of intent, a candidate for office may accept in
18 contributions up to ten thousand dollars (\$10,000) from sources and in
19 amounts permitted by Article 22A of this Chapter and may expend up
20 to ten thousand dollars (\$10,000) for any campaign purpose. A
21 candidate who exceeds either of these limits shall be ineligible to file a
22 declaration of intent or receive funds from the Public Campaign
23 ~~Financing~~ Fund.
- 24 (2) From the filing of a declaration of intent through the end of the
25 qualifying period, a candidate shall expend ~~no more than an amount up~~
26 ~~to a limit equal to the maximum qualifying contributions for that~~
27 ~~candidate, not including candidate and, in addition, may expend~~
28 possible rescue funds ~~or~~ and the remaining money raised pursuant to
29 subdivision (1) of this subsection. Contributions a candidate may use
30 to expend to that limit shall be limited to qualifying ~~contributions,~~
31 contributions, from North Carolina registered voters that are under ten
32 dollars (\$10.00), and personal and family contributions permitted by
33 subdivision (4) of this subsection.
- 34 (3) After the qualifying period and through the date of the general
35 election, the candidate shall expend only the funds the candidate
36 receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any
37 funds remaining from the qualifying period and possible rescue funds.
- 38 (4) During the qualifying period, the candidate may contribute up to one
39 thousand dollars (\$1,000) of that candidate's own money to the
40 ~~campaign and campaign.~~ Debt incurred by the candidate for a
41 campaign expenditure shall count toward that limit. The candidate may
42 accept in contributions one thousand dollars (\$1,000) from each
43 member of that candidate's family consisting of spouse, parent, child,
44 brother, and sister.

- 1 (5) A candidate and the candidate's committee shall limit the use of all
2 revenues permitted by this subsection to expenditures for
3 campaign-related purposes only. The Board shall publish guidelines
4 outlining permissible campaign-related expenditures. In establishing
5 those guidelines, the Board shall differentiate expenditures that
6 reasonably further a candidate's campaign from expenditures for
7 personal use that would be incurred in the absence of the candidacy. In
8 establishing the guidelines, the Board shall review relevant provisions
9 of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules
10 adopted pursuant to it, and similar provisions in other states.
- 11 (6) Any contribution received by a participating or certified candidate that
12 falls outside that permitted by this subsection shall be returned to the
13 donor as soon as practicable. Contributions intentionally made,
14 solicited, or accepted in violation of this Article are subject to civil
15 penalties as specified in G.S. 163-278.70. The funds involved shall be
16 forfeited to the Civil Penalty and Forfeiture Fund.
- 17 (7) A candidate shall return to the Fund any amount distributed for an
18 election that is unspent and uncommitted at the date of the election, or
19 at the time the individual ceases to be a certified candidate, whichever
20 occurs first. For accounting purposes, all qualifying, personal, and
21 family contributions shall be considered spent before revenue from the
22 Fund is spent or committed."

23 **SECTION 6.** Article 22D of Chapter 163 of the General Statutes is amended
24 by adding a new section to read:

25 **"§ 163-278.64A. Special participation provisions for candidates in plurality**
26 **elections.**

27 (a) Participation Provisions Modified. – Candidates in plurality elections as
28 provided in G.S. 163-329 may participate in the Fund subject to the provisions of
29 G.S. 163-278.64 as modified by this section.

30 (b) Qualifying. – The State Board of Elections shall designate a special
31 qualifying period for plurality election of no less than four weeks. That qualifying
32 period shall begin at the close of the notice-of-candidacy filing period for the plurality
33 election. To receive certification, a participating candidate shall raise at least 225
34 qualifying contributions, totaling at least 20 times the amount of the filing fee for the
35 office, for a four-week qualifying period. If the State Board of Elections sets a longer
36 qualifying period, the minimum number of qualifying contributions shall increase by
37 25, and the total amount of the qualifying contributions shall be two times the filing fee.
38 The minimum qualifying contributions shall not exceed the limit set by
39 G.S. 163-278.64(b).

40 (c) Allocations. – Certified candidates in plurality elections shall receive one
41 percent (1%) of the funding to which they would be eligible under G.S. 163-278.65
42 times the number of calendar days between the end of the special qualifying period and
43 the day of the general elections. That amount shall not exceed one hundred percent
44 (100%) of the funding to which they would be eligible under G.S. 163-278.65."

1 **SECTION 7.** G.S. 163-278.65(c) reads as rewritten:

2 "(c) Method of Fund Distribution. – The Board, in consultation with the State
3 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying
4 funds to certified candidates. In all cases, the Board shall distribute funds to certified
5 candidates in a manner that is expeditious, ensures accountability, and safeguards the
6 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified
7 candidates, then the available money shall be distributed proportionally, according to
8 each candidate's eligible ~~funding.~~ funding, and the candidate may raise additional
9 money in the same manner as a noncertified candidate for the same office up to the
10 unfunded amount of the candidate's eligible funding."

11 **SECTION 8.** G.S. 163-278.66(a) reads as rewritten:

12 "(a) Reporting by Noncertified Candidates and Independent Expenditure Entities.
13 – Any noncertified candidate with a certified opponent shall report total income,
14 expenses, and obligations to the Board by facsimile machine or electronically within 24
15 hours after the total amount of campaign expenditures or obligations made, or funds
16 raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as
17 defined in G.S. 163-278.62(18). Any entity making independent expenditures ~~in excess~~
18 ~~of three thousand dollars (\$3,000)~~ in support of or opposition to a certified candidate or
19 in support of a candidate opposing a certified candidate shall report the total funds
20 received, spent, or obligated for those expenditures to the Board by facsimile machine
21 or electronically within 24 hours after the total amount of expenditures or obligations
22 made, or funds raised or borrowed, for the purpose of making the independent
23 expenditures, exceeds ~~fifty percent (50%) of the trigger for rescue funds.~~ five thousand
24 dollars (\$5,000). After this 24-hour filing, the noncertified candidate or independent
25 expenditure entity shall comply with an expedited reporting schedule by filing
26 additional reports after receiving each additional amount in excess of one thousand
27 dollars (\$1,000) or after making or obligating to make each additional expenditure(s) in
28 excess of one thousand dollars (\$1,000). The schedule and forms for reports required by
29 this subsection shall be made according to procedures developed by the Board."

30 **SECTION 9.** G.S. 163-278.68(b) reads as rewritten:

31 "(b) Advisory Council for the Public Campaign ~~Financing~~ Fund. – There is
32 established under the Board the Advisory Council for the Public Campaign ~~Financing~~
33 Fund to advise the Board on the rules, procedures, and opinions it adopts for the
34 enforcement and administration of this Article and on the funding needs and operation
35 of the Public Campaign ~~Financing~~ Fund. The Advisory Council shall consist of five
36 members to be appointed as follows:

- 37 (1) The Governor shall name two members from a list of individuals
38 nominated by the State Chair of the political party with which the
39 greatest number of registered voters is affiliated. The State Chair of
40 that party shall submit to the Governor the names of five nominees.
- 41 (2) The Governor shall name two members from a list of individuals
42 nominated by the State Chair of the political party with which the
43 second greatest number of registered voters is affiliated. The State

1 Chair of that party shall submit to the Governor the names of five
2 nominees.

- 3 (3) The Board shall name one member by unanimous vote of all members
4 of the Board. If the Board cannot reach unanimity on the appointment
5 of that member, the Advisory Council shall consist of the remaining
6 members.

7 No individual shall be eligible to be a member of the Advisory Council who would
8 be ineligible to serve on a county board of elections in accordance with G.S. 163-30.
9 The initial members shall be appointed by December 1, 2002. Of the initial appointees,
10 two are appointed for one-year terms, two are appointed for two-year terms, and one is
11 appointed for a three-year term according to random lot. Thereafter, appointees are
12 appointed to serve four-year terms. An individual may not serve more than two full
13 ~~terms-terms, except that regardless of the time of appointment each term shall end on~~
14 December 31. A member shall continue on the Advisory Council beyond the expired
15 term until a successor is appointed. The appointed members receive the legislative per
16 diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected
17 by the members as Chair. A vacancy during an unexpired term shall be filled in the
18 same manner as the regular appointment for that term, but a vacancy appointment is
19 only for the unexpired portion of the term."

20 **SECTION 10.** G.S. 163-278.69(a) reads as rewritten:

21 "(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that
22 explains the functions of the appellate courts and the laws concerning the election of
23 appellate judges, the purpose and function of the Public Campaign ~~Financing~~-Fund, and
24 the laws concerning voter registration. The Board shall distribute the Guide to as many
25 voting-age individuals in the State as practical, through a mailing to all residences or
26 other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor
27 fewer than seven days before one-stop voting period provided in G.S. 163-227.2 for the
28 primary and no more than ~~28~~14 days nor fewer than seven days before one-stop voting
29 period provided in G.S. 163-227.2 for the general election."

30 **SECTION 11.** G.S. 163-278.69(c) reads as rewritten:

31 "(c) Disclaimer. – The Judicial Voter Guide shall contain the following statement:
32 ~~The above statements~~Statements by candidates do not express or reflect the opinions of
33 the State Board of Elections."

34 **SECTION 12.** G.S. 163-278.13(e) reads as rewritten:

35 "(e) ~~This~~Except as provided in subsection (e2) of this section, this section shall
36 not apply to any national, State, district or county executive committee of any political
37 party. For the purposes of this section only, the term "political party" means only those
38 political parties officially recognized under G.S. 163-96."

39 **SECTION 13.** G.S. 163-278.5 reads as rewritten:

40 "**§ 163-278.5. Scope of Article; severability.**

41 The provisions of this Article apply to primaries and elections for North Carolina
42 offices and to North Carolina referenda and do not apply to primaries and elections for
43 federal offices or offices in other States or to non-North Carolina referenda. Any
44 provision in this Article that regulates a non-North Carolina entity does so only to the

1 extent that the entity's actions affect elections for North Carolina offices or North
2 Carolina referenda.

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

6 This section applies to Articles 22B, 22D, 22E, and 22F of Chapter 163 of the
7 General Statutes to the same extent that it applies to this Article."

8 **SECTION 14.** G.S. 163-278.23 reads as rewritten:

9 **"§ 163-278.23. Duties of Executive Director of Board.**

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

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

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

30 The Executive Director of the Board of Elections shall issue written opinions to
31 candidates, the communications media, political committees, referendum committees, or
32 other entities upon request, regarding filing procedures and compliance with this
33 Article. Any such opinion so issued shall specifically refer to this paragraph. If the
34 candidate, communications media, political committees, referendum committees, or
35 other entities rely on and comply with the opinion of the Executive Director of the
36 Board of Elections, then prosecution or civil action on account of the procedure
37 followed pursuant thereto and prosecution for failure to comply with the statute
38 inconsistent with the written ruling of the Executive Director of the Board of Elections
39 issued to the candidate or committee involved shall be barred. Nothing in this paragraph
40 shall be construed to prohibit or delay the regular and timely filing of reports. The
41 Executive Director shall file all opinions issued pursuant to this section with the
42 Codifier of Rules to be published unedited in the North Carolina Register and the North
43 Carolina Administrative Code.

1 This section applies to Articles 22B, 22D, 22E, and 22F of Chapter 163 of the
2 General Statutes to the same extent that it applies to this Article."

3 **SECTION 15.** Wherever the term "Public Campaign Financing Fund"
4 appears in the General Statutes, it shall read "Public Campaign Fund."

5 **SECTION 16.** G.S. 105-159.2 reads as rewritten:

6 **"§ 105-159.2. Designation of tax to North Carolina Public Campaign Financing**
7 **Fund.**

8 (a) Allocation to the North Carolina Public Campaign ~~Financing~~ Fund. – To
9 ensure the financial viability of the North Carolina Public Campaign ~~Financing~~ Fund
10 established in Article 22D of Chapter 163 of the General Statutes, the Department must
11 allocate to that Fund three dollars (\$3.00) from the income taxes paid each year by each
12 individual with an income tax liability of at least that amount, if the individual agrees. A
13 taxpayer must be given the opportunity to indicate an agreement or objection to that
14 allocation in the manner described in subsection (b) of this section. In the case of a
15 married couple filing a joint return, each individual must have the option of agreeing or
16 objecting to the allocation. The amounts allocated under this subsection to the Fund
17 must be credited to it on a quarterly-monthly basis.

18 (b) Returns. – Individual income tax returns must give an individual an
19 opportunity to agree to the allocation of three dollars (\$3.00) of the individual's tax
20 liability to the North Carolina Public Campaign ~~Financing~~ Fund. The Department must
21 make it clear to the taxpayer that the dollars will support a nonpartisan court system,
22 that the dollars will go to the Fund if the taxpayer marks an agreement, and that
23 allocation of the dollars neither increases nor decreases the individual's tax liability. The
24 following statement ~~satisfies the intent of~~ must be used to meet this requirement: "~~Three~~
25 ~~dollars (\$3.00) will go to the North Carolina Public Campaign Financing Fund to~~
26 ~~support a nonpartisan court system, if you agree. Your tax remains the same whether or~~
27 ~~not you agree.~~" "This Fund pays for a nonpartisan voter guide and helps judicial
28 candidates who accept strict fund-raising limits. Do you agree to direct \$3 to this Fund
29 from the taxes you pay anyway? Marking Yes will not increase your tax or reduce your
30 refund.' The Department must consult with the State Board of Elections to ensure that
31 the information given to taxpayers complies with the intent of this section.

32 The Department must inform the entities it approves to reproduce the return ~~of that~~
33 they must comply with the requirements of this section and that a return may not reflect
34 an agreement or objection unless the individual completing the return decided to agree
35 or object after being presented with the statement required by subsection (b) of this
36 section and, as available background information or instructions, the information
37 required by subsection (c) of this section. No software package used in preparing North
38 Carolina income tax returns may default to an agreement or objection. A paid preparer
39 of tax returns may not mark an agreement or objection for a taxpayer without the
40 taxpayer's consent.

41 (c) Instructions. – The instruction for individual income tax returns must include
42 the following explanatory statement: "The North Carolina Public Campaign ~~Financing~~
43 Fund provides campaign money to nonpartisan candidates for the ~~North Carolina N.C.~~
44 Supreme Court and Court of Appeals who voluntarily accept strict campaign spending

1 and fund-raising limits. The Fund also helps finance a Voter Guide with educational
2 materials about voter registration, the role of the appellate courts, and the candidates
3 seeking election as appellate judges in North Carolina. Three dollars (~~\$3.00~~) from the
4 taxes you pay will go to the Fund if you mark an agreement. Regardless of what choice
5 you make, your tax will not increase, nor will any refund you are entitled to be
6 reduced."

7 **SECTION 17.** Sections 1, 2, and 3 of this act become effective January 1,
8 2006, and apply to the membership fees due for 2006. The remainder of this act is
9 effective when it becomes law.