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HOUSE BILL 1737  
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Short Title: Legal Expense Funds.

(Public)

Sponsors:

Referred to:

April 19, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE LEGAL EXPENSE FUNDS OF ELECTED OFFICERS TO  
3 PROVIDE FOR DISCLOSURE OF CONTRIBUTIONS AND EXPENDITURES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Subchapter VIII of Chapter 163 of the General Statutes is  
6 amended to add a new Article to read:

7 "Article 22M.

8 "Legal Expense Funds.

9 "§ 163-278.300. Definitions.

10 As used in this Article, the following terms mean:

11 (1) Board. – The State Board of Elections.

12 (2) Contribution. – As defined in G.S. 163-278.6. The term "contribution"  
13 does not include either of the following:

14 a. The provision of legal services to an elected officer by the State  
15 or any of its political subdivisions when those services are  
16 authorized or required by law or

17 b. The provision of free or pro bono legal advice or legal services,  
18 provided that any costs incurred or expenses advanced for  
19 which clients are liable under other provisions of law shall be  
20 deemed contributions.

21 (3) Elected officer. – Any individual serving in or seeking a public office.  
22 An individual is seeking a public office when that individual has filed  
23 any notice, petition, or other document required by law or local act as a  
24 condition of election to public office. An individual continues to be an  
25 elected officer for purposes of this Article as long as a legal action

1 commenced while the individual was an elected officer continues. If a  
2 legal action is commenced after an individual ceases to serve in or  
3 seek public office but the legal action concerns subject matter in the  
4 individual's official capacity as an elected officer, for purposes of this  
5 Article, that individual is an elected officer as long as that legal action  
6 continues.

7 (4) Expenditure. – As defined in G.S. 163-278.6.

8 (5) Legal action. – A formal dispute in a judicial, legislative, or  
9 administrative forum, including but not limited to, a civil or criminal  
10 action filed in a court, a complaint or protest filed with a board of  
11 elections, an election contest filed under Article 3 of Chapter 120 of  
12 the General Statutes or G.S. 163-182.13A, or a complaint filed with  
13 the State Ethics Commission or Legislative Ethics Committee. The  
14 term "legal action" also includes investigations made or conducted  
15 before the commencement of any formal proceedings. The term "legal  
16 action" does not include the election itself or the campaign for  
17 election.

18 (6) Legal expense fund. – Any collection of money for the purpose of  
19 funding a legal action, or a potential legal action, taken by or against  
20 an elected officer in that elected officer's official capacity.

21 (7) Official capacity. – Related to or resulting from the campaign for  
22 public office or related to or resulting from holding public office.  
23 "Official capacity" is not limited to "scope and course of employment"  
24 as used in G.S. 143-300.3.

25 (8) Public office. – As defined in G.S. 163-278.6.

26 (9) Treasurer. – An individual appointed by an elected officer or other  
27 individual or group of individuals collecting money for a legal expense  
28 fund.

29 **§ 163-278.301. Creation of legal expense funds.**

30 (a) An elected officer, or another individual or group of individuals on the  
31 elected officer's behalf, shall create a legal expense fund if given a contribution, other  
32 than from that elected officer's self, spouse, parents, brothers, or sisters, for any of the  
33 following purposes:

34 (1) To fund an existing legal action taken by or against the elected officer  
35 in that elected officer's official capacity.

36 (2) To fund a potential legal action taken by or against an elected officer  
37 in that elected officer's official capacity.

38 (b) This section shall not apply to any contribution to the State or any of its  
39 political subdivisions.

40 (c) The legal expense fund shall comply with all provisions of this Article.

41 (d) If an elected officer funds legal actions entirely from that elected officer's  
42 own contributions or the contributions of the elected officer's spouse, parents, brothers,  
43 or sisters, that elected officer is not required to create a legal expense fund. If a legal  
44 expense fund accepts contributions as described in subsection (a) of this section, that

1 legal expense fund shall report the elected officer's own contributions and those of those  
2 family members along with the other contributions in accordance with  
3 G.S. 163-278.310.

4 (e) Contractual arrangements, including liability insurance, or commercial  
5 relationships or arrangements made in the normal course of business if not made for the  
6 purpose of lobbying, are not "contributions" for purposes of this Article. Use of such  
7 contractual arrangements to fund legal actions does not by itself require the elected  
8 officer to create a legal expense fund. If a legal expense fund has been created pursuant  
9 to subsection (a) of this section, such contractual arrangements shall be reported as  
10 expenditures.

11 (f) A violation of this Article shall be punishable as a Class 1 misdemeanor.

12 **"§§ 163-278.302 through 163-278.305: Reserved for future codification purposes.**

13 **"§ 163-278.306. Treasurer.**

14 (a) Each legal expense fund shall appoint a treasurer and, under verification,  
15 report the name and address of the treasurer to the Board.

16 (b) A legal expense fund may remove its treasurer. In case of the death,  
17 resignation, or removal of its treasurer, the legal expense fund shall appoint a successor  
18 within 10 calendar days of the vacancy and certify the name and address of the  
19 successor in the same manner provided in the case of an original appointment.

20 (c) Every treasurer of a legal expense fund shall receive training from the Board  
21 as to the duties of the office within three months of appointment and at least once every  
22 four years thereafter.

23 **"§ 163-278.307. Detailed accounts to be kept by treasurer.**

24 (a) The treasurer of each legal expense fund shall keep detailed accounts, current  
25 within seven calendar days after the date of receiving a contribution or making an  
26 expenditure, of all contributions received and all expenditures made by or on behalf of  
27 the legal expense fund.

28 (b) Accounts kept by the treasurer of a legal expense fund or the accounts of a  
29 treasurer or legal expense fund at any bank or other depository may be inspected by a  
30 member, designee, agent, attorney, or employee of the Board who is making an  
31 investigation pursuant to G.S. 163-278.22.

32 (c) For purposes of this section, "detailed accounts" shall mean at least all  
33 information required to be included in the quarterly report required under this Article.

34 (d) When a treasurer shows that best efforts have been used to obtain, maintain,  
35 and submit the information required by this Article, any report of the legal expense shall  
36 be considered in compliance with this Article and shall not be the basis for criminal  
37 prosecution or the imposition of civil penalties. The State Board of Elections shall adopt  
38 rules to implement this subsection.

39 **"§ 163-278.308. Reports filed with Board.**

40 (a) The treasurer of each legal expense fund shall file with the Board the  
41 following reports:

42 (1) Organizational report. – The report required under G.S. 163-278.309.

43 (2) Quarterly report. – The report required under G.S. 163-278.310.

1       **(b)** Any report or attachment required by this Article must be filed under  
2 certification of the treasurer as true and correct to the best of the knowledge of that  
3 officer.

4       **(c)** The organizational report shall be filed within 10 calendar days of the  
5 creation of the legal expense fund. All quarterly reports shall be filed with the Board no  
6 later than 10 business days after the end of each calendar quarter.

7       **(d)** Treasurers shall electronically file each report required by this section that  
8 shows a cumulative total for the quarter in excess of five thousand dollars (\$5,000) in  
9 contributions or expenditures, according to rules adopted by the Board. The Board shall  
10 provide the software necessary to the treasurer to file the required electronic report at no  
11 cost to the legal expense fund.

12       **(e)** Any statement required to be filed under this Article shall be signed and  
13 certified as true and correct by the treasurer and shall be certified as true and correct to  
14 the best of the treasurer's knowledge. The elected officer creating the legal expense  
15 fund, or the other individual or group of individuals creating the legal expense fund on  
16 the elected officer's behalf, shall certify as true and correct to the best of their  
17 knowledge the organizational report and appointment of the treasurer. A certification  
18 under this Article shall be treated as under oath, and any individual making a  
19 certification under this Article knowing the information to be untrue is guilty of a Class  
20 I felony.

21 **"§ 163-278.309. Organizational report.**

22       **(a)** Each appointed treasurer shall file with the Board a statement of organization  
23 that includes all of the following:

24           **(1)** The name, address, and purpose of the legal expense fund.

25           **(2)** The names, addresses, and relationships of affiliated or connected  
26 elected officers, candidates, political committees, referendum  
27 committees, political parties, or similar organizations.

28           **(3)** The name, address, and position with the legal expense fund of the  
29 custodian of books and accounts.

30           **(4)** A listing of all banks, safety deposit boxes, or other depositories used,  
31 including the names and numbers of all accounts maintained and the  
32 numbers of all such safety deposit boxes used. The Board shall keep  
33 any account number required by this Article confidential except as  
34 necessary to conduct an audit or investigation, except as required by a  
35 court of competent jurisdiction, or except as confidentiality is waived  
36 by the treasurer. Disclosure of an account number in violation of this  
37 subdivision shall not give rise to a civil cause of action. This limitation  
38 of liability does not apply to the disclosure of account numbers in  
39 violation of this subdivision as a result of gross negligence, wanton  
40 conduct, or intentional wrongdoing that would otherwise be  
41 actionable.

42           **(5)** The name or names and address or addresses of any assistant treasurers  
43 appointed by the treasurer. Such assistant treasurers shall be authorized  
44 to act in the name of the treasurer, who shall be fully responsible for

1           any act or acts committed by an assistant treasurer, and the treasurer  
2           shall be fully liable for any violation of this Article committed by any  
3           assistant treasurer.

4           (6) Any other information which might be requested by the Board that  
5           deals with the legal expense fund organization.

6           (b) Any change in information previously submitted in a statement of  
7           organization shall be reported to the Board within 10 calendar days following the  
8           change.

9           "**§ 163-278.310. Quarterly report.**

10           The treasurer of each legal expense fund shall be required to file a quarterly report  
11           with the Board containing all of the following:

12           (1) Contributions. – The name and complete mailing address of each  
13           contributor, the amount of the contribution, the principal occupation of  
14           the contributor, and the date the contribution was received. The total  
15           sum of all contributions to date shall also be plainly exhibited. The  
16           treasurer is not required to report the name of any contributor making a  
17           total contribution of fifty dollars (\$50.00) or less in a calendar quarter,  
18           but shall instead report the fact that the treasurer has received a total  
19           contribution of fifty dollars (\$50.00) or less, the amount of the  
20           contribution, and the date of receipt.

21           (2) Expenditures. – A list of all expenditures made by or on behalf of the  
22           legal expense fund. The report shall list the name and complete  
23           mailing address of each payee, the amount paid, the purpose, and the  
24           date such payment was made. The total sum of all expenditures to date  
25           shall also be plainly exhibited. The payee shall be the entity to whom  
26           the legal expense fund is obligated to make the expenditure. If the  
27           expenditure is to a financial institution for revolving credit or a  
28           reimbursement for a payment to a financial institution for revolving  
29           credit, the statement shall also include a specific itemization of the  
30           goods and services purchased with the revolving credit. If the  
31           obligation is for more than one good or service, the statement shall  
32           include a specific itemization of the obligation so as to provide a  
33           reasonable understanding of the obligation.

34           (3) Loans. – All proceeds from loans shall be recorded separately with a  
35           detailed analysis reflecting the amount of the loan, the source, the  
36           period, the rate of interest, and the security pledged, if any, and all  
37           makers and endorsers.

38           "**§§ 163-278.311 through 163-278.315: Reserved for future codification purposes.**

39           "**§ 163-278.316. Limitations on contributions.**

40           (a) No entity shall make, and no treasurer shall accept, any monetary  
41           contribution in excess of fifty dollars (\$50.00) unless such contribution is in the form of  
42           a check, draft, money order, credit card charge, debit, or other noncash method that can  
43           be subject to written verification. No contribution in the form of check, draft, money  
44           order, credit card charge, debit, or other noncash method may be made or accepted

1 unless it contains a specific designation of the intended contributee chosen by the  
2 contributor.

3 (b) The State Board of Elections may adopt rules as to the reporting and  
4 verification of any method of contribution payment allowed under this Article. For  
5 contributions by money order, the State Board shall adopt rules to ensure an audit trail  
6 for every contribution so that the identity of the contributor can be determined.

7 (c) For any contribution made by credit card, the credit card account number of a  
8 contributor is not a public record.

9 (d) No contribution to a legal expense fund shall be permitted that would be a  
10 violation of G.S. 163-278.13B or G.S. 120-302 if made to a candidate or political  
11 committee.

12 **"§§ 163-278.317 through 163-278.319: Reserved for future codification purposes.**

13 **"§ 163-278.320. Permitted uses of legal expense funds.**

14 (a) A legal expense fund may be used for reasonable expenses actually incurred  
15 by the elected officer in relation to a legal action or potential legal action brought by or  
16 against the elected officer in that elected officer's official capacity. The elected officer's  
17 campaign itself shall not be funded from a legal expense fund.

18 (b) Upon closing a legal expense account, the treasurer shall distribute the  
19 remaining monies in the legal expense fund to any of the following:

20 (1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter  
21 7A of the General Statutes.

22 (2) The North Carolina State Bar for the provision of civil legal services  
23 for indigents.

24 (3) Contributions to an organization described in section 170(c) of the  
25 Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the  
26 candidate or the candidate's spouse, children, parents, brothers, or  
27 sisters are not employed by the organization.

28 (4) To return all or a portion of a contribution to the contributor.

29 (5) Payment to the Escheat Fund established by Chapter 116B of the  
30 General Statutes.

31 **"§§ 163-278.321 through 163-278.329: Reserved for future codification purposes."**

32 **SECTION 2.** G.S. 163-278.22(7) reads as rewritten:

33 "(7) To make investigations to the extent the Board deems necessary with  
34 respect to statements filed under the provisions of this Article and with  
35 respect to alleged failures to file any statement required under the  
36 provisions of this ~~Article~~, Article or Article 22M of the General  
37 Statutes and, upon complaint under oath by any registered voter, with  
38 respect to alleged violations of any part of this ~~Article~~, Article or  
39 Article 22M of the General Statutes."

40 **SECTION 3.** G.S. 163-278.22(8) reads as rewritten:

41 "(8) After investigation, to report apparent violations by candidates,  
42 political committees, referendum committees, legal expense funds,  
43 individuals or persons to the proper district attorney as provided in  
44 G.S. 163-278.27."

1           **SECTION 4.** G.S. 163-278.36 is repealed.

2           **SECTION 5.** G.S. 163-278.5 reads as rewritten:

3   "**§ 163-278.5. Scope of Article; severability.**

4       The provisions of this Article apply to primaries and elections for North Carolina  
5 offices and to North Carolina referenda and do not apply to primaries and elections for  
6 federal offices or offices in other States or to non-North Carolina referenda. Any  
7 provision in this Article that regulates a non-North Carolina entity does so only to the  
8 extent that the entity's actions affect elections for North Carolina offices or North  
9 Carolina referenda.

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

13       This section applies to Articles 22B, 22D, 22E, ~~and 22F~~ 22F, 22G, 22H, and 22M of  
14 the General Statutes to the same extent that it applies to this Article."

15           **SECTION 6.** G.S. 163-278.23 reads as rewritten:

16   "**§ 163-278.23. Duties of Executive Director of Board.**

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

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

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

37       The Executive Director of the Board of Elections shall issue written opinions to  
38 candidates, the communications media, political committees, referendum committees, or  
39 other entities upon request, regarding filing procedures and compliance with this  
40 Article. Any such opinion so issued shall specifically refer to this paragraph. If the  
41 candidate, communications media, political committees, referendum committees, or  
42 other entities rely on and comply with the opinion of the Executive Director of the  
43 Board of Elections, then prosecution or civil action on account of the procedure  
44 followed pursuant thereto and prosecution for failure to comply with the statute

1 inconsistent with the written ruling of the Executive Director of the Board of Elections  
2 issued to the candidate or committee involved shall be barred. Nothing in this paragraph  
3 shall be construed to prohibit or delay the regular and timely filing of reports. The  
4 Executive Director shall file all opinions issued pursuant to this section with the  
5 Codifier of Rules to be published unedited in the North Carolina Register and the North  
6 Carolina Administrative Code.

7 This section applies to Articles 22B, 22D, 22E, ~~and 22F~~ 22F, 22G, 22H, and 22M of  
8 the General Statutes to the same extent that it applies to this Article."

9 **SECTION 7.** This act becomes effective January 1, 2008.