

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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HOUSE BILL 2023

Short Title: Corporate/Union Money in Campaigns. (Public)

Sponsors: Representatives Harrison, Insko, Current (Primary Sponsors); Gill, Luebke, and Mackey.

Referred to: Judiciary I, if favorable, Election Law and Campaign Finance Reform, if favorable, Appropriations.

May 26, 2010

A BILL TO BE ENTITLED

1
2 AN ACT TO RESPOND TO THE U.S. SUPREME COURT'S DECISION IN CITIZENS
3 UNITED V. FEC IN A MANNER SIMILAR TO THAT OF IOWA BY REQUIRING THE
4 REPORTING OF THE FAIR MARKET VALUE OF ALL IN-KIND CONTRIBUTIONS;
5 BY REQUIRING DETAILED REPORTING WITHIN FORTY-EIGHT HOURS OF ANY
6 INDEPENDENT EXPENDITURE EXCEEDING IN THE AGGREGATE SEVEN
7 HUNDRED FIFTY DOLLARS; BY REQUIRING THAT ANY INDEPENDENT
8 EXPENDITURE BY AN ORGANIZATION IN EXCESS OF SEVEN HUNDRED FIFTY
9 DOLLARS BE APPROVED BY A MAJORITY OF THE ORGANIZATION'S BOARD
10 OF DIRECTORS OR SIMILAR BODY; BY PROHIBITING THE USE OF THE SAME
11 ADVERTISING FIRM OR CONSULTANT BY AN ENTITY MAKING AN
12 INDEPENDENT EXPENDITURE AND BY THE CANDIDATE OR REFERENDUM
13 COMMITTEE BENEFITING FROM THAT INDEPENDENT EXPENDITURE; BY
14 PROHIBITING FOREIGN NATIONALS, INCLUDING FOREIGN CORPORATIONS,
15 FROM MAKING INDEPENDENT EXPENDITURES; BY REPEALING THE NORTH
16 CAROLINA BANS ON CORPORATE AND UNION INDEPENDENT EXPENDITURES
17 MIRRORING THOSE HELD UNCONSTITUTIONAL BY THE SUPREME COURT IN
18 CITIZENS UNITED V. FEC; AND TO APPROPRIATE FUNDS FOR THE ACT'S
19 IMPLEMENTATION.

20 The General Assembly of North Carolina enacts:

21 **SECTION 1.** G.S. 163-278.11(a)(1) reads as rewritten:

22 "(1) Contributions. – Except as provided in subsection (a1) of this section, a list
23 of all contributions received by or on behalf of a candidate, political
24 committee, or referendum committee. The statement shall list the name and
25 complete mailing address of each contributor, the amount contributed, the
26 principal occupation of the contributor, and the date such contribution was
27 received. The total sum of all contributions to date shall be plainly exhibited.
28 Forms for required reports shall be prescribed by the Board. As used in this
29 section, "principal occupation of the contributor" means the contributor's:

30 a. Job title or profession; and

31 b. Employer's name or employer's specific field of business activity.

32 The State Board of Elections shall prepare a schedule of specific fields of
33 business activity, adapting or modifying as it deems suitable the business
34 activity classifications of the Internal Revenue Code or other relevant
35 classification schedules. In reporting a contributor's specific field of business



1 activity, the treasurer shall use the classification schedule prepared by the
2 State Board. The reporting of an in-kind contribution shall include the
3 estimated fair market value of the in-kind contribution at the time the
4 contribution is made. For purposes of this section, the estimated fair market
5 value of the in-kind contribution shall be reported regardless of whether the
6 recipient has been billed for the cost of the in-kind contribution."

7 **SECTION 2.** G.S. 163-278.12(a) reads as rewritten:

8 "(a) Subject to G.S. 163-278.39 and G.S. 163-278.14, individuals and other entities not
9 otherwise prohibited from doing so may make independent expenditures. In the event an
10 individual or other entity making independent expenditures but not otherwise required to report
11 them makes independent expenditures in excess of one hundred dollars (\$100.00), that
12 individual or entity shall file a statement of such independent expenditure with the appropriate
13 board of elections in the manner prescribed by the State Board of Elections. Independent
14 expenditures exceeding seven hundred fifty dollars (\$750.00) in the aggregate shall be
15 governed by G.S. 163-278.19C."

16 **SECTION 3.** Article 22A of Chapter 163 of the General Statutes is amended by
17 adding a new section to read:

18 **§ 163-278.19C. Independent expenditures.**

19 (a) This section applies to independent expenditures in excess of seven hundred fifty
20 dollars (\$750.00) by any entity in any calendar year. For purposes of this section, an
21 electioneering communication as defined in G.S. 163-278.80 and G.S. 163-278.90 shall be
22 treated as an independent expenditure.

23 (b) An entity, other than an individual or individuals, shall not make an independent
24 expenditure or disburse funds from its treasury to pay for, in whole or in part, an independent
25 expenditure made by another without the authorization of a majority of the entity's board of
26 directors, executive council, or similar organizational leadership body of the use of treasury
27 funds for an independent expenditure involving a candidate or referendum committee. That
28 authorization must occur in the same calendar year in which the independent expenditure is
29 incurred.

30 (c) The authorization required in subsection (b) of this section shall expressly provide
31 whether the board of directors, executive council, or similar organizational leadership body
32 authorizes one or more independent expenditures that expressly advocate the nomination or
33 election of a candidate or passage of a ballot issue or authorizes one or more independent
34 expenditures that expressly advocate the defeat of a candidate or ballot issue.

35 (d) A foreign national shall not make an independent expenditure, directly or indirectly,
36 that advocates the nomination, election, or defeat of any candidate or the passage or defeat of
37 any ballot issue. As used in this section, "foreign national" means an entity who is not a citizen
38 of the United States and who is not lawfully admitted for permanent residence. "Foreign
39 national" includes a foreign principal, such as a government of a foreign country or a foreign
40 political party, partnership, association, corporation, organization, or other combination of
41 entities that has its primary place of business in or is organized under the laws of a foreign
42 country. "Foreign national" does not include an individual who is a citizen of the United States
43 or and entity that is a national of the United States.

44 (e) An entity making an independent expenditure shall not engage or retain an
45 advertising firm or consultant that has also been engaged or retained within the prior six
46 months by the candidate, candidate's committee, or referendum committee that is benefited by
47 the independent expenditure.

48 (f) An independent expenditure governed by this section shall be reported to the State
49 Board of Elections within 48 hours of the making in the aggregate of an independent
50 expenditure. The State Board shall immediately make the independent expenditure statement
51 available for public viewing. The maker of the independent expenditure shall update the report

1 within 48 hours of making in the aggregate an additional seven hundred fifty dollars (\$750.00)
2 benefiting the same candidate or ballot issue. For purposes of this section, an independent
3 expenditure is made when the independent expenditure communication is purchased or ordered
4 regardless of whether or not the entity making the independent expenditure has been billed for
5 the cost of the independent expenditure. The independent expenditure statement shall contain
6 all of the following information:

- 7 (1) Identification of the individuals or other entities filing the statement.
- 8 (2) Description of the position advocated by the individuals or other entities
9 with regard to the clearly identified candidate or ballot issue.
- 10 (3) Identification of the candidate or ballot issue benefited by the independent
11 expenditure.
- 12 (4) The dates on which the expenditure or expenditures took place or will take
13 place.
- 14 (5) Description of the nature of the action taken that resulted in the expenditure
15 or expenditures.
- 16 (6) The fair market value of the expenditure or expenditures. The reporting of an
17 in-kind contribution shall include the estimated fair market value of the
18 in-kind contribution at the time the contribution is made. For purposes of
19 this section, the estimated fair market value of the in-kind contribution shall
20 be reported regardless of whether the recipient has been billed for the cost of
21 the in-kind contribution.
- 22 (7) A certification by an officer of the corporation that the board of directors,
23 executive council, or similar organizational leadership body expressly
24 authorized the independent expenditure or use of treasury funds for the
25 independent expenditure by resolution or other affirmative action within the
26 calendar year when the independent expenditure was incurred.
- 27 (8) Donors or sources of funding made to the entity making the independent
28 expenditure for the purpose of making the expenditure. This section shall not
29 require the disclosure of any donor or other source of funding to the entity
30 making the independent expenditure except when the donation or source of
31 funding, or a portion of the donation or source of funding, was provided for
32 the purpose of furthering the independent expenditure.

33 The State Board of Elections shall provide forms and electronic means of complying with
34 the 48-hour reporting required by this section."

35 **SECTION 4.** G.S. 163-278.19 reads as rewritten:

36 **"§ 163-278.19. Violations by corporations, business entities, labor unions, professional**
37 **associations and insurance companies.**

38 (a) Except as provided in subsections (a2), (b), (d), (e), (f), and (g) of this section it
39 shall be unlawful for any corporation, business entity, labor union, professional association or
40 insurance company to do any of the following directly or indirectly:

- 41 (1) To make any contribution to a candidate or political committee or to make
42 any expenditure to support or oppose the nomination or election of a clearly
43 identified candidate; committee.
- 44 (2) To pay or use or offer, consent or agree to pay or use any of its money or
45 property for any contribution to a candidate or political committee or for any
46 expenditure to support or oppose the nomination or election of a clearly
47 identified candidate; or committee.
- 48 (3) To compensate, reimburse, or indemnify any person or individual for money
49 or property so used or for any contribution or expenditure so made; so made.

50 ~~and it~~ It shall be unlawful for any officer, director, stockholder, attorney, agent or member of
51 any corporation, business entity, labor union, professional association or insurance company to

1 aid, abet, advise or consent to any such ~~contribution or expenditure~~, contribution, or for any
2 person or individual to solicit or knowingly receive any such ~~contribution or expenditure~~.
3 contribution. ~~Supporting or opposing the election of clearly identified candidates includes~~
4 ~~supporting or opposing the candidates of a clearly identified political party~~. Any officer,
5 director, stockholder, attorney, agent or member of any corporation, business entity, labor
6 union, professional association or insurance company aiding or abetting in any contribution or
7 ~~expenditure~~ made in violation of this section shall be guilty of a Class 2 misdemeanor, and
8 shall in addition be liable to such corporation, business entity, labor union, professional
9 association or insurance company for the amount of such ~~contribution or expenditure~~,
10 contribution, and the same may be recovered of him upon suit by any stockholder or member
11 thereof.

12 (a1) A transfer of funds shall be deemed to have been a contribution or ~~expenditure~~ made
13 indirectly if it is made to any committee or political party account, whether inside or outside
14 this State, with the intent or purpose of being exchanged in whole or in part for any other funds
15 to be contributed or expended in an election for North Carolina office or to offset any other
16 funds contributed or ~~expended~~ in an election for North Carolina office.

17 (a2) Proceeds of loans made in the ordinary course of business by financial institutions
18 may be used for contributions made in compliance with this Chapter. Financial institutions may
19 also grant revolving credit to political committees and referendum committees in the ordinary
20 course of business.

21 (b) It shall, however, be lawful for any corporation, business entity, labor union,
22 professional association or insurance company to communicate with its employees,
23 stockholders or members and their families on any subject; to conduct nonpartisan registration
24 and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their
25 families; or for officials and employees of any corporation, insurance company or business
26 entity or the officials and members of any labor union or professional association to establish,
27 administer, contribute to, and to receive and solicit contributions to a separate segregated fund
28 to be utilized for political purposes, and those individuals shall be deemed to become and be a
29 political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as
30 defined in G.S. 163-278.6(18b); provided, however, that it shall be unlawful for any such fund
31 to make a contribution or ~~expenditure~~ by utilizing contributions secured by physical force, job
32 discrimination, financial reprisals or the threat of force, job discrimination or financial
33 reprisals, or by dues, fees, or other moneys required as a condition of membership or
34 employment or as a requirement with respect to any terms or conditions of employment,
35 including, without limitation, hiring, firing, transferring, promoting, demoting, or granting
36 seniority or employment-related benefits of any kind, or by moneys obtained in any
37 commercial transaction whatsoever.

38 (c) A violation of this section is a Class 2 misdemeanor. In addition, the acceptance of
39 any contribution, ~~expenditure~~, payment, reimbursement, indemnification, or anything of value
40 under subsection (a) shall be a Class 2 misdemeanor.

41 (d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney,
42 agent, or employee of any corporation, business entity, labor union, professional association or
43 insurance company, and by virtue of his position therewith uses office space and
44 communication facilities of the corporation, business entity, labor union, professional
45 association or insurance company in the normal and usual scope of his employment, the fact
46 that the candidate or treasurer receives telephone calls, mail, or visits in such office which
47 relates to activities prohibited by this Article shall not be considered a violation under this
48 section.

49 (e) Notwithstanding the prohibitions specified in this Article and Article 22 of this
50 Chapter, a political committee organized under provisions of this Article shall be entitled to
51 receive and the corporation, business entity, labor union, professional association, or insurance

1 company designated on the committee's organizational report as the parent entity of the
2 employees or members who organized the committee is authorized to give reasonable
3 administrative support that shall include record keeping, computer services, billings, mailings
4 to members of the committee, membership development, fund-raising activities, office
5 supplies, office space, and such other support as is reasonably necessary for the administration
6 of the committee.

7 The approximate cost of any reasonable administrative support shall be submitted to the
8 committee, in writing, and the committee shall include that cost on the report required by
9 G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of
10 the compensation of any officer or employee of the corporation, business entity, labor union,
11 professional association, or insurance company who has devoted more than thirty-five percent
12 (35%) of his time during normal business hours of the corporation, business entity, labor union,
13 professional association, or insurance company during the period covered by the required
14 report. The approximate cost submitted by the parent corporation, business entity, labor union,
15 professional association, or insurance company shall be entered on the committee's report as the
16 final entry on its list of "contributions" and a copy of the written approximate cost received by
17 it shall be attached.

18 The reasonable administrative support given by a corporation, business entity, labor union,
19 professional association, or insurance company shall be designated on the books of the
20 corporation, business entity, labor union, professional association, or insurance company as
21 such and may not be treated by it as a business deduction for State income tax purposes.

22 (f) This section does not prohibit a contribution ~~or independent expenditure~~ by an entity
23 that:

- 24 (1) Has as an express purpose promoting social, educational, or political ideas
25 and not to generate business income;
- 26 (2) Does not have shareholders or other persons which have an economic
27 interest in its assets and earnings; and
- 28 (3) Was not established by a business corporation, by an insurance company, by
29 a business entity, including, but not limited to, those chartered under Chapter
30 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a
31 professional association, or by a labor union and does not receive substantial
32 revenue from such entities. Substantial revenue is rebuttably presumed to be
33 more than ten percent (10%) of total revenues in a calendar year.

34 (g) If a political committee has as its only purpose accepting contributions and making
35 expenditures to influence elections, and that political committee incorporates as a nonprofit
36 corporation to shield its participants from liability created outside this Chapter, that political
37 committee is not considered to be a corporation for purposes of this section. Incorporation of a
38 political committee does not relieve any individual, person, or other entity of any liability, duty,
39 or obligation created pursuant to any provision of this Chapter. To obtain the benefits of this
40 subsection, an incorporating political committee must state exactly the following language as
41 the only purpose for which the corporation can be organized: "to accept contributions and make
42 expenditures to influence elections as a political committee pursuant to G.S. 163-278.6(14)
43 only." No political committee shall do business as a political committee after incorporation
44 unless it has been certified by the State Board of Elections as being in compliance with this
45 subsection."

46 **SECTION 5.** G.S. 163-278.39 reads as rewritten:

47 **"§ 163-278.39. Basic disclosure requirements for all political campaign advertisements.**

48 (a) Basic Requirements. – It shall be unlawful for any sponsor to sponsor an
49 advertisement in the print media or on radio or television that constitutes an expenditure or
50 contribution required to be disclosed under this Article unless all the following conditions are
51 met:

- 1 (1) It bears the legend or includes the statement: "Paid for by _____ [Name of
2 candidate, candidate campaign committee, political party organization,
3 political action committee, referendum committee, individual, or other
4 sponsor]." In television advertisements, this disclosure shall be made by
5 visual legend. If the sponsor is a corporation, the words "Paid for by" shall
6 be followed by the name and address of the corporation, and the name and
7 title of the corporation's chief executive officer shall appear on the material.
8 If the advertisement is the result of an independent expenditure subject to
9 G.S. 163-278.19C, the advertisement shall include a statement that it was not
10 authorized by any candidate, candidate's committee, or ballot issue
11 committee.
- 12 (2) The name used in the labeling required in subdivision (1) of this subsection
13 is the name that appears on the statement of organization as required in
14 G.S. 163-278.7(b)(1).
- 15 (3) Repealed by Session Laws 2001-353, s. 5, effective August 10, 2001.
- 16 (4) The sponsor states in the advertisement its position for or against a ballot
17 measure, provided that this subdivision applies only if the advertisement is
18 made for or against a ballot measure.
- 19 (5) In a print media advertisement supporting or opposing the nomination or
20 election of one or more clearly identified candidates, the sponsor states
21 whether it is authorized by a candidate. The visual legend in the
22 advertisement shall state either "Authorized by [name of candidate],
23 candidate for [name of office]" or "Not authorized by a candidate." This
24 subdivision does not apply if the sponsor of the advertisement is the
25 candidate the advertisement supports or that candidate's campaign
26 committee.
- 27 (6) In a print media advertisement that identifies a candidate the sponsor is
28 opposing, the sponsor discloses in the advertisement the name of the
29 candidate who is intended to benefit from the advertisement. This
30 subdivision applies only when the sponsor coordinates or consults about the
31 advertisement or the expenditure for it with the candidate who is intended to
32 benefit.

33 If an advertisement described in this section is jointly sponsored, the disclosure statement
34 shall name all the sponsors.

35 (b) Size Requirements. – In a print media advertisement covered by subsection (a) of
36 this section, the height of all disclosure statements required by that subsection shall constitute
37 at least five percent (5%) of the height of the printed space of the advertisement, provided that
38 the type shall in no event be less than 12 points in size. In an advertisement in a newspaper or a
39 newspaper insert, the total height of the disclosure statement need not constitute five percent of
40 the printed space of the advertisement if the type of the disclosure statement is at least 28 points
41 in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure
42 requirement of this section applies only to one page, fold, or face. In a television advertisement
43 covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan
44 lines in size. In a radio advertisement covered by subsection (a) of this section, the disclosure
45 statement shall last at least two seconds, provided the statement is spoken so that its contents
46 may be easily understood.

47 (c) Misrepresentation of Authorization. – Notwithstanding G.S. 163-278.27(a), any
48 candidate, candidate campaign committee, political party organization, political action
49 committee, referendum committee, individual, or other sponsor making an advertisement in the
50 print media or on radio or television bearing any legend required by subsection (a) of this

1 section that misrepresents the sponsorship or authorization of the advertisement is guilty of a
2 Class 1 misdemeanor."

3 **SECTION 6.** G.S. 163-278.80(4) is repealed.

4 **SECTION 7.** G.S. 163-278.82 is repealed.

5 **SECTION 8.** G.S. 163-278.90(5) is repealed.

6 **SECTION 9.** G.S. 163-278.92 is repealed.

7 **SECTION 10.** G.S. 163-278.27(a) reads as rewritten:

8 "(a) Any individual, candidate, political committee, referendum committee, treasurer,
9 person or media who intentionally violates the applicable provisions of G.S. 163-278.7,
10 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B,
11 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.19C,
12 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D,
13 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations
14 shall run from the day the last report is due to be filed with the appropriate board of elections
15 for the election cycle for which the violation occurred."

16 **SECTION 11.** There is appropriated from the General Fund to the State Board of
17 Elections the sum of one hundred thousand dollars (\$100,000) for the 2010-2011 fiscal year for
18 the purpose of implementing the 48-hour reporting of independent expenditures required by
19 this act.

20 **SECTION 12.** Section 10 of this act becomes effective December 1, 2010. Section
21 11 of this act becomes effective July 1, 2010. The remainder of this act becomes effective upon
22 being precleared under section 5 of the Voting Rights Act.