

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 966 (Second Edition)

SHORT TITLE: Expanded Voter-Owned Elections.

SPONSOR(S): Senator Nesbitt

| FISCAL IMPACT | | | | | |
|---|--|--------------------------|----------------------------------|--------------------------|--------------------------|
| | Yes () | No () | No Estimate Available (X) | | |
| | <u>FY 2009-10</u> | <u>FY 2010-11</u> | <u>FY 2011-12</u> | <u>FY 2012-13</u> | <u>FY 2013-14</u> |
| REVENUES | - | - | - | - | - |
| EXPENDITURES | See Assumptions and Methodology | | | | |
| POSITIONS (cumulative): | See Assumptions and Methodology | | | | |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State Board of Elections | | | | | |
| EFFECTIVE DATE: Except as otherwise provided in this act, this act is effective when it becomes law. | | | | | |

BILL SUMMARY:

The proposed legislation expands the 'Voter-Owned Elections Act' from the three currently covered offices to include the additional five offices of Attorney General, Treasurer, Secretary of State, and Commissioners of Agriculture and Labor. The proposed legislation also makes the following changes to the workings of the Council of State program:

1. **Write-ins.** The proposed legislation clarifies that a write-in candidate is not eligible to participate.
2. **Qualifying Contributions.** The proposed legislation makes several changes to the provisions on qualifying contributions, which must be raised from registered NC voters in amounts between \$10 and \$200:
 - **Method of Payment.** The proposed legislation allows acceptance by any non-cash method otherwise allowed for contributions, notable including credit cards and Pay Pal.
 - **Minimums.** The proposed legislation would change the formula to require contributions from at least 900 voters and add 100 voters to that number for every \$100,000 over \$300,000 that the candidate would be entitled to receive in grants for the office. (See below for the different grant amounts, designed to recognize that some Council of State offices cost more to run for

than others.) The proposed legislation changes the threshold dollar amount of qualifying contributions to equal \$20 times the minimum number of voters from whom qualifying contributions must be raised. So, a candidate for an office in the lower grant range would have to raise \$18,000 from at least 900 voters.

- **Maximums.** The proposed legislation eliminates the filing fee as a measure, as with the minimum. For a candidate with no primary, the maximum would be \$100 times the minimum number of voters from whom qualifying contributions must be received. If the candidate has a contested primary, the maximum would be \$200 times the minimum number of voters from whom qualifying contributions must be received. A candidate for an office in the lower grant range with no primary could raise no more than \$90,000 in qualifying contributions.
- **No Raffles.** The proposed legislation adds that "the opportunity to win anything of value" shall not be given in exchange for a qualifying contribution.
- **Multiple Contributions from Same Individual.** The proposed legislation clarifies that multiple qualifying contributions from the same person can count as only one qualifying contribution, for purposes of meeting the threshold. Also, the proposed legislation provides that multiple contributions from the same non-family member may not exceed \$200.
- **Family Contributions.** The proposed legislation states that up to \$200 of a family member's contribution may be treated as a qualifying contribution.

3. Grants from the Fund. The proposed legislation provides that only expenditures made in the general elections will count toward that measurement. Expenditures are made in the general election if they must be reported in the 3rd or 4th quarterly reports. Also, the proposed legislation says the result of the formula is rounded to the nearest \$1,000.

4. Matching Funds. The proposed legislation makes two changes to the law on matching funds:

1. **In the Primary.** The proposed legislation provides that matching funds are available in a primary to a certified candidate with a primary opponent or to a certified candidate who has no primary opponent but who is clearly targeted by opposition spending.
2. **No Matching Funds for All-Candidate Ads.** In 2008, in the judicial program, an ad was run supporting both the candidates in one Court of Appeals race. The State Board of Elections felt compelled by the law to give both of them matching funds, which they both turned down. The proposed legislation provides that there will be no matching funds for a communication that supports all the candidates in the race or opposes all the candidates in the race.

5. Enforcement. For the judicial program, a statute provides for the State Board to be advised in enforcement by an Advisory Council, provides for an appeal procedure, and provides for specific State Board authority to adopt procedures and issue opinions. The Council of State program does not have that same statute. The proposed legislation imports the statute into the Council of State program, using the same Advisory Council for both programs.

6. Voter Guide. The proposed legislation expands the Voter Guide's coverage to all 10 offices in the Council of State, including Governor and Lieutenant Governor, which are not affected by the programs. The proposed legislation would replace the word limits of 50 for endorsements and 150 for statement with one word cap of 250 words for the candidate's entire entry. That would include

biographical information. The proposed legislation would replace permissive language for the State Board to publish the Judicial and Council of State guides together with a mandate to do so whenever possible.

Senate committee substitute filed on 3/25/09 adds GS 163-278.97A, which sets limits on the number of contested offices and candidates who may be eligible for a distribution of funds from the Voter-Owned Elections Fund depending on the amount of money available in the fund on August 1 of the year before an election and the specific office. Also, the proposed legislation appropriates \$2,000,000 for fiscal year 2009-2010 and \$7,160,000 for fiscal year 2010-2011 from the General Fund to implement the proposed changes to the Voter-Owned Elections Act. The proposed legislation amends the proposed new statute, GS 163-278.99B(f), to prohibit matching funds from being available as a result of an electioneering communication that the Board ascertains is susceptible to no reasonable interpretation other than as an appeal to vote for or against all candidates for the same office.

Source: Bill Digest S.B. 966 (03/26/2009).

ASSUMPTIONS AND METHODOLOGY:

According to the 2008-2009 Campaign Finance Manual issued by the Campaign Finance Office of the North Carolina State Board of Elections, there are five sources of revenue for the North Carolina Voter-Owned Elections Fund. In addition to distributions to qualified candidates, all expenses for implementation, including staff, administrative, and enforcement costs, are paid for by the North Carolina Voter-Owned Elections Fund. Revenue for the Fund is provided through the following means:

- The first source is from any voluntary donation made directly to the Voter-Owned Elections Fund. In the past, there have been few donations.
- The second source is from appropriations from the General Fund. The legislature appropriated \$1,000,000 for the 2007-2008 fiscal year and \$3,580,000 for the 2008-2009 fiscal year for the implementation of the Act. This source provides almost all the funding.
- The third source is from Fund revenues that were distributed to candidates, but were not spent or committed at the time a candidate is no longer considered a certified candidate for that election. This source produces little funding.
- The fourth source is any funds ordered to be returned to the Fund as a result of a violation by a participating or certified candidate in the Program. This source produces little funding.
- The fifth source is from money paid to the Fund as a result of a candidate forfeiting funds in excess of the \$20,000 cap on contributions and expenditures between August 1st of the year before the election and the date of declaring a candidate's intent to participate in the Program. This source produces little funding.

The State Board of Elections is responsible for administering the Fund, including the development of procedures for the proper administration of the Program. The Board will make determinations regarding whether electioneering communications will trigger matching funds and will be responsible for making determinations of violations of Article 22J of Chapter 163 of the General Statutes, the provisions creating the Program.

The Board has delegated the daily administration of the Fund to the Campaign Finance Division of the State Board of Elections. Under the direction of the Board, the Campaign Finance Division will audit all reports of both non-participating and participating candidates to ensure compliance with the provisions of the Program. Certification requirements will be verified by Campaign Finance staff prior to the Board certifying a candidate.

G.S. 163-278.99 outlines the method employed by the State Board of Elections, in consultation with the State Treasurer and the State Controller, to determine how the Fund is distributed among certified candidates. In the chart below, the column on the left is the name of the particular seat on the Council of State. The middle column is the average over the last three elections regarding the particular seat as addressed in G.S. 163-278.99(b)(4). The right hand column is the funding for the certified candidate as mentioned in the same statute under G.S. 163-278.99(c).

| Council of State seat | Average over last three elections (rounded per statute) | Amount certified candidate would receive |
|------------------------------|--|---|
| Secretary of State | \$198,000 | \$300,000 |
| Attorney General | \$1,759,000 | \$1,759,000 |
| Treasurer | \$1,064,000 | \$1,064,000 |
| Commissioner of Agriculture | \$365,000 | \$365,000 |
| Commissioner of Labor | \$150,000 | \$300,000 |
| State Auditor | \$135,000 | \$300,000 |
| Commissioner of Insurance | \$280,000 | \$300,000 |
| Supt. Of Public Instruction | \$161,000 | \$300,000 |

Due to a number of variables, the State Board of Elections is not able to determine the fiscal impact of Senate Bill 966. In any election, there are unknowns that affect the cost of the particular election. These variables include the number of candidates who file for a particular vacancy. Typically, the work load for the State Board of Election is impacted by this as well as by their review and auditing of candidates who submit information to verify them as qualifiers to receive distributions from the Voter-Owned Election Fund. Therefore, the Board does anticipate that the proposed legislation will increase their work load, and thus, could require more personnel. However, at this time, the Board is not able to estimate how many positions may be needed.

SOURCES OF DATA: North Carolina State Board of Elections

TECHNICAL CONSIDERATIONS: None

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