

SENATE BILL NO. 2143

Introduced by

Senators Behm, Mathern, Anderson

Representative Gruchalla

1 A BILL for an Act to create and enact chapter 16.1-08.2 of the North Dakota Century Code,
2 relating to public financing of clean election campaigns; to provide a penalty; and to provide a
3 continuing appropriation.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 16.1-08.2 of the North Dakota Century Code is created and
6 enacted as follows:

7 **16.1-08.2-01. Definitions.** As used in this chapter, unless the context otherwise
8 requires:

- 9 1. "Candidate" means a candidate as defined under section 16.1-08.1-01 who is
10 seeking nomination for election or election to the legislative assembly.
- 11 2. "Certified candidate" means a candidate who is certified as a clean election
12 candidate under this chapter.
- 13 3. "Contribution" means a contribution as defined in section 16.1-08.1-01.
- 14 4. "Nonparticipating candidate" means a candidate who does not choose to
15 participate as a clean election candidate under this chapter and who is not seeking
16 to be certified as a clean election candidate.
- 17 5. "Participating candidate" means a candidate who is seeking to be certified as a
18 clean election candidate under this chapter.
- 19 6. "Qualifying contribution" means a donation of five dollars in the form of a check or
20 a money order payable to the clean election fund in support of a candidate which is
21 made by a qualified elector within the candidate's legislative district and during the
22 designated qualifying period and obtained with the knowledge and approval of the
23 candidate, and which is acknowledged by a written receipt that identifies the name
24 and address of the donor on forms provided by the secretary of state.

7. "Qualifying period" means the time between January first of a year in which a general election is held and five p.m. on April fifteenth of that year.

8. "Seed money contribution" means a contribution of no more than one hundred dollars per individual made to a candidate.

16.1-08.2-02. The clean election fund - Continuing appropriation.

1. The clean election fund is a special fund in the state treasury administered by the secretary of state. The fund is established to finance the election campaign of any certified candidate and to pay administrative and enforcement costs of the secretary of state under this chapter. The moneys in the fund and any interest generated by the fund are appropriated on a continuing basis for the purposes of this chapter.

2. a. The following must be deposited in the clean election fund:

(1) Any qualifying contribution submitted to the secretary of state under section 16.1-08.2-03.

(2) Any funds appropriated for that purpose by the legislative assembly.

(3) Revenue from a tax checkoff program that must be established by the tax commissioner, beginning with the 2007 taxable year, which allows a resident of the state who files an income tax return to designate that three dollars be paid into the fund. If a husband and wife file a joint return, each spouse may designate that three dollars be paid.

(4) Any seed money contribution remaining unspent after a candidate has been certified as a clean election candidate.

(5) Any funds that were distributed to a clean election candidate and which remain unspent after the candidate has lost a primary election or after a general election.

(6) Any other unspent funds distributed to any certified candidate who does not remain a candidate throughout a primary or general election cycle.

(7) Any voluntary donation made to the fund.

(8) Any penalty fee collected under this chapter.

b. If the secretary of state determines that the fund will not have sufficient revenues to cover the likely demand for funds from the fund in an upcoming

calendar year, the secretary of state shall provide a report of the projection of the balances in the fund to the legislative assembly and the governor.

3. By September first preceding each election year, the secretary of state shall publish an estimate of revenue in the fund available for distribution to each certified candidate and an estimate of the likely demand for clean elections funding during that election.

16.1-08.2-03. Terms of participation.

1. A participating candidate shall file a declaration of intent to seek certification and to comply with this chapter. The candidate shall file the declaration of intent with the secretary of state before or during the qualifying period according to procedures developed by the secretary of state. If a participating candidate does not submit a declaration of intent within five business days of collecting qualifying contributions under this chapter, any qualifying contribution collected before the declaration of intent has been filed may not be counted toward the eligibility requirements in subsection 3.
2. After becoming a candidate and before certification, a participating candidate may not accept any contribution, except for a seed money contribution. A participating candidate shall limit the candidate's seed money contributions to one thousand five hundred dollars.
3. A participating candidate shall obtain qualifying contributions during the qualifying period from at least one hundred fifty qualified electors from the candidate's legislative district. A participating candidate may not give any payment, gift, or anything of value in exchange for a qualifying contribution.
4. A participating candidate shall submit each qualifying contribution to the secretary of state during the qualifying period according to procedures developed by the secretary of state.
5. a. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the secretary of state shall determine whether the candidate has:
- (1) Signed and filed a declaration of intent as required under this chapter;
- (2) Submitted the appropriate number of valid qualifying contributions;

(3) Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions;

(4) Not run for the same office as a nonparticipating candidate in a primary election in the same election year; and

(5) Otherwise met the requirements for participation under this chapter.

b. The secretary of state shall certify a candidate complying with the requirements of this section as a clean election candidate within three business days after final submittal of qualifying contributions.

c. Upon certification, a candidate shall transfer to the clean election fund any unspent seed money contributions. A certified candidate shall comply with all requirements of this chapter after certification.

6. After certification as a clean election candidate, a candidate shall limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the clean election fund and may not accept any contribution unless specifically authorized by the secretary of state. A candidate also may accept and spend interest earned on a bank account. The candidate may use any revenues distributed to the candidate from the fund only for campaign-related purposes.

16.1-08.2-04. Distribution of funds.

1. The secretary of state shall distribute to a certified candidate ten thousand dollars from the clean election fund within three days after certification. The secretary of state may distribute to a certified candidate by any mechanism that is expeditious, ensures accountability, and safeguards the integrity of the fund.

2. The certified candidate shall deposit all revenues from the clean election fund in a campaign account with a bank, credit union, or other financial institution. The campaign funds must be segregated from any other funds.

3. If a campaign finance report or statement filed under this chapter or chapter 16.1-08.1 indicates that the sum of a candidate's contributions received or expenditures made exceeds ten thousand dollars, the secretary of state shall issue immediately to any opposing certified candidate an additional amount, up to twenty thousand dollars, which is equivalent to the reported excess.

- 1 4. The secretary of state shall establish by rule procedures for qualification,
2 certification, disbursement of clean election fund revenues, and return of unspent
3 fund revenues for races involving special elections, recounts, vacancies,
4 withdrawals, or replacement candidates.

5 **16.1-08.2-05. Reports required.**

- 6 1. In addition to any statement required to be filed under chapter 16.1-08.1, a
7 participating and a certified candidate shall report any contribution received and
8 each campaign expenditure, obligation, or related activity for the calendar month to
9 the secretary of state within seven days after the end of each calendar month
10 during the election year. A candidate shall file a cumulative or final report within
11 thirty days after an election. Upon the filing of a final report for any primary election
12 in which the candidate was defeated and for all general elections, a candidate shall
13 return all unspent clean election fund revenues to the secretary of state.

- 14 2. a. A certified candidate shall obtain and keep:

- 15 (1) Bank or other account statements for the campaign account covering
16 the duration of the campaign;
17 (2) An invoice stating the particular goods or services purchased for every
18 expenditure of fifty dollars or more; and
19 (3) A record proving that a vendor received payment for every expenditure
20 of fifty dollars or more in the form of a canceled check, receipt from the
21 vendor, or a bank or credit card statement identifying the vendor as the
22 payee.

- 23 b. The candidate shall preserve the records for two years following the
24 candidate's final campaign finance report for the election year. The candidate
25 shall submit a copy of any record to the secretary of state upon request.

26 **16.1-08.2-06. Distributions not to exceed amount in fund.** The secretary of state

27 may not distribute revenues to certified candidates in excess of the total amount of money
28 deposited in the fund. Notwithstanding any other provision of this chapter, if the secretary of
29 state determines that the revenues in the fund are insufficient to meet distributions, the
30 secretary of state may permit certified candidates to accept and spend contributions, reduced

by any seed money contributions, aggregating no more than two hundred fifty dollars per donor per election, up to the limits provided in subsections 2 and 3 of section 16.1-08.2-04.

16.1-08.2-07. Appeals.

1. A candidate who has been denied certification as a clean election candidate or the opponent of a candidate who has been granted certification may challenge a certification decision by the secretary of state by submitting an appeal to the secretary of state in writing which must set forth the reasons for the appeal.
2. Within five days after an appeal is received, the secretary of state shall provide notice to the challenger and any opponent and hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision was improper. The secretary of state shall rule on the appeal within three days after the completion of the hearing.
3. A challenger may appeal the final decision of the secretary of state by commencing an action in district court in Burleigh County.
4. A candidate whose certification by the secretary of state is revoked on appeal shall return to the secretary of state any unspent revenues distributed from the clean election fund. If the secretary of state or district court finds that an appeal was made frivolously or to cause delay or hardship, the secretary of state or court may require the moving party to pay costs of the secretary of state, court, and opposing parties, if any.

16.1-08.2-08. Violations - Penalty.

1. An individual who violates any provision of this chapter or rules of the secretary of state adopted to implement this chapter is subject to a fee not to exceed ten thousand dollars per violation. The secretary of state may assess a fee of up to ten thousand dollars for a violation of the reporting requirements of section 5 if the secretary of state determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. In addition to any penalty fee, for good cause shown, a candidate found in violation of this chapter or rules of the secretary of state may be required to return to the clean election fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. In determining whether a candidate is in violation of

- 1 the expenditure limits of this chapter, the secretary of state may consider as a
2 mitigating factor any circumstances out of the candidate's control.
- 3 2. An individual who knowingly makes a false statement in any report required by this
4 chapter is guilty of a class A misdemeanor and shall return to the fund any money
5 distributed to the candidate.