

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1402

Short Title: N.C. Clean Election Act.

(Public)

Sponsors: Representatives Alexander, Nesbitt, Earle, Goodwin (Primary Sponsors); Adams, Barefoot, Blue, Bonner, Braswell, Church, Cunningham, Easterling, Fitch, Hackney, Hardaway, Hill, Hunter, Hurley, Insko, Jarrell, Jeffus, Kinney, Luebke, Michaux, Miller, Mosley, Oldham, Smith, Tolson, Wainwright, Warner, Womble, and Yongue.

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

April 29, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROGRAM WHICH ALLOWS VOTERS TO AUTHORIZE THAT PUBLIC FUNDS BE USED TO SUPPORT THE CAMPAIGNS OF CANDIDATES FOR GOVERNOR, LIEUTENANT GOVERNOR, OTHER COUNCIL OF STATE OFFICES, AND THE GENERAL ASSEMBLY WHO AGREE TO ABIDE BY FUND-RAISING AND SPENDING LIMITS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

“ARTICLE 22D.

“THE NORTH CAROLINA CLEAN ELECTION ACT.

“§ 163-278.61. Definitions.

When used in this Article:

- 1 (1) The term ‘certified candidate’ means a candidate running for office who
2 chooses to participate in the North Carolina Clean Election Act and who
3 is certified as a Clean Election Act candidate under G.S. 163-278.64(e).
4 (2) The term ‘Commission’ means the North Carolina Commission on
5 Election Practices, as established under G.S. 163-278.65.
6 (3) The terms ‘contested primary election’ and ‘contested general election’
7 mean elections in which there are more candidates than the number to
8 be elected.
9 (4) The terms ‘contribution’ and ‘expenditure’ have the same meaning as
10 defined in G.S. 163-278.6.
11 (5) The term ‘election cycle’ comprises the primary, runoff primary, and
12 general election for election to the same term of the same office.
13 (6) The term ‘Fund’ means the North Carolina Clean Election Fund
14 established in G.S. 163-278.63.
15 (7) The term ‘nonparticipating candidate’ means a candidate running for
16 Governor, Lieutenant Governor, other office in the Council of State,
17 State Senator, or State Representative who does not choose to
18 participate in the North Carolina Clean Election Act and who is not
19 seeking to be certified as a Clean Election Act candidate under G.S.
20 163-278.64(e).
21 (8) The term ‘office’, as used in this Article, means Governor, Lieutenant
22 Governor, other office in the Council of State, State Senator, or State
23 Representative.
24 (9) The term ‘participating candidate’ means a candidate who is running for
25 office who is seeking to be certified as a Clean Election Act candidate
26 under G.S. 163-278.64(e).
27 (10) The term ‘qualifying contribution’ means a donation of not less than
28 fifteen dollars (\$15.00) and not more than seventy-five dollars (\$75.00)
29 in the form of a check or money order payable to the candidate that is:
30 a. Made by any registered voter who is eligible to vote for the
31 office which the candidate is seeking;
32 b. Made during the designated qualifying period and obtained
33 through efforts made with the knowledge and approval of the
34 candidate; and
35 c. Acknowledged by a written receipt, on a form provided by the
36 Commission, which identifies the name, address, and principal
37 occupation of the donor in accordance with G.S. 163-278.11;
38 states that the donor is a registered voter who is eligible to vote
39 for the office the candidate is seeking; and states that the donor
40 authorizes the candidate to use the contribution to qualify to
41 receive campaign funds from the Clean Election Fund.
42 (11) The term ‘excess qualifying contributions’ means the qualifying
43 contributions received in excess of a sum to be determined by

1 multiplying the minimum number of qualifying contributions required
2 for that office by the maximum dollar amount allowed for such
3 contributions.

4 (12) The term 'qualifying period' means:

5 a. For participating candidates for Governor, Lieutenant Governor,
6 and other offices in the Council of State, the period beginning
7 270 days before the close of the filing period for candidates for
8 party nomination for the office and ending at the close of the
9 filing period for candidates for party nomination for the office.

10 b. For participating candidates for State Senator and State
11 Representative, the period beginning 120 days before the close of
12 the filing period for candidates for party nomination for the
13 office and ending at the close of the filing period for candidates
14 for party nomination for the office.

15 **"§ 163-278.62. Purpose and establishment of North Carolina Clean Election Act.**

16 The purpose of this Article is to ensure the vitality and fairness of democratic
17 elections in North Carolina, to the end that any eligible citizen of this State can
18 realistically choose to seek and run for public office. It is also the purpose of this Article
19 to protect the constitutional rights of voters and candidates from the detrimental effects of
20 increasingly large amounts of money being raised and spent in North Carolina to
21 influence the outcome of elections. It is in the public interest to minimize the potential for
22 corruption or the appearance of corruption, and to ensure the equal and meaningful
23 participation of all citizens in the democratic process. Accordingly, this Article
24 establishes the North Carolina Clean Election Fund as an alternative source of campaign
25 financing for candidates who obtain a sufficient number of qualifying contributions from
26 registered voters and who voluntarily accept strict fund-raising and spending limits. This
27 Article is available to candidates for candidates for Governor, Lieutenant Governor, other
28 Council of State offices, and the General Assembly in elections to be held in 2002 and
29 thereafter. Candidates participating in this Article must also comply with all other
30 applicable election and campaign laws and rules. The Commission shall administer this
31 Article and the North Carolina Clean Election Fund.

32 **"§ 163-278.63. North Carolina Clean Election Fund established; sources of funding.**

33 (a) Establishment of Fund. – The North Carolina Clean Election Act is established
34 to finance the election campaigns of certified candidates for office and to pay
35 administrative and enforcement costs of the Commission related to this Article. The
36 Fund is a special, dedicated, nonlapsing fund. Any interest generated by the Fund is
37 credited to the Fund. The Commission shall administer the Fund.

38 (b) Sources of Funding. – Money received from the following sources must be
39 deposited in the Fund:

40 (1) Unspent Clean Election Act revenues distributed to any Clean Election
41 Act candidate who does not remain a candidate until the primary or
42 general election for which they were distributed, or such revenues that

1 remain unspent by a candidate following the date of the primary election
2 or general election for which they were distributed;

3 (2) Any money transferred to the Clean Election Fund from the North
4 Carolina Candidates Financing Fund;

5 (3) Contributions made to the Clean Election Fund by individual taxpayers
6 pursuant to G.S. 105-269.6;

7 (4) Voluntary donations made directly to the Clean Election Fund; and

8 (5) General Fund monies appropriated for the use of the Clean Election
9 Fund by the General Assembly pursuant to subsection (c) of this
10 section.

11 (c) Determination of Fund Amount. – By April 1, 2001, and every two years
12 thereafter, the Commission shall prepare and provide to the General Assembly a report
13 documenting, evaluating, and making recommendations relating to the administration,
14 implementation, and enforcement of the North Carolina Clean Election Act. In its report,
15 the Commission shall set out the funds received to date, the expected needs of the Fund
16 during the next election cycle, and the amount of the appropriation from the General
17 Assembly that will be needed for the biennium. The General Assembly shall include in
18 its appropriations from the General Fund that year at least the amount that the
19 Commission states in its report will be needed. In addition, the General Assembly shall
20 reserve for the first fiscal year of the biennium at least fifteen percent (15%) of the
21 amount of funds the Commission states in its report that it will need during the biennium,
22 to be used by the Commission to cover any disbursement under G.S. 163-278.64 in
23 excess of the amount of its direct appropriation.

24 **"§ 163-278.64. Terms of participation.**

25 (a) Declaration of Intent. – Any individual choosing to participate in the North
26 Carolina Clean Election Act shall first file with the Commission a declaration of intent to
27 participate in the Act as a candidate for a stated office. The declaration of intent shall be
28 filed with the Commission prior to or during the qualifying period, except as provided
29 under subsection (m) of this section, according to forms and procedures developed by the
30 Commission. A candidate choosing to participate in the Clean Election Act must submit
31 a declaration of intent prior to collecting any qualifying contributions under this Article.

32 A candidate who files a declaration of intent shall swear or affirm that the candidate
33 has complied with and will continue to comply with Clean Election Act contribution and
34 expenditure limits and will comply with all other requirements set forth in this Article, or
35 promulgated by the Commission.

36 (b) Restrictions on Contributions and Expenditures for Participating Candidates. –
37 After becoming a participating candidate as defined by G.S. 163-278.61(6) and prior to
38 certification, participating candidates shall not accept contributions, except for qualifying
39 contributions. A participating candidate shall expend only from the qualifying
40 contributions raised and shall not use other funds.

41 (c) Qualifying Contributions. – Participating candidates must obtain qualifying
42 contributions as follows:

- 1 (1) For a candidate for Governor, at least 7,000 verified registered North
2 Carolina voters shall have supported the candidacy by providing a
3 qualifying contribution to that candidate.
- 4 (2) For a candidate for Lieutenant Governor or Attorney General, at least
5 4,000 verified registered North Carolina voters shall have supported the
6 candidacy by providing a qualifying contribution to that candidate.
- 7 (3) For a candidate for other office in the Council of State, at least 2,750
8 verified registered North Carolina voters shall have supported the
9 candidacy by providing a qualifying contribution to that candidate.
- 10 (4) For a candidate for State Senator, at least 500 verified registered voters
11 shall have supported the candidacy by providing a qualifying
12 contribution to that candidate.
- 13 (5) For a candidate for State Representative, at least 250 verified registered
14 voters shall have supported the candidacy by providing a qualifying
15 contribution to that candidate.

16 No payment, gift, or anything of value shall be given in exchange for a qualifying
17 contribution.

18 (d) Filing With the Commission. – All participating candidates shall report
19 qualifying contributions with the Commission at least five business days after the end of
20 the qualifying period in accordance with procedures developed by the Commission,
21 except as provided under subsection (m) of this section.

22 (e) Certification of Clean Election Act Candidates. – Upon receipt of a final
23 submittal of the record of qualifying contributions by a participating candidate, the
24 Commission shall determine whether or not the candidate has:

- 25 (1) Signed and filed a declaration of intent to participate in this Article;
26 (2) Reported the appropriate number of qualifying contributions;
27 (3) Qualified as a candidate under G.S. 163-106, 163-98, 163-122, 163-123,
28 or 163-114;
29 (4) Complied with expenditure restrictions; and
30 (5) Otherwise met the requirements for participation in this Article.

31 The Commission shall certify candidates complying with the requirements of this
32 section as Clean Election Act candidates as soon as possible and no later than five
33 business days after final submittal of qualifying contributions.

34 Certified candidates shall comply with all requirements of this Article after
35 certification and throughout the primary election and general election periods. Failure to
36 do so is a violation of this Article.

37 (f) Restrictions on Contributions and Expenditures for Participating and Certified
38 Candidates. – After filing a declaration of intent, a candidate shall limit campaign
39 expenditures and debts to the qualifying contributions and the revenues distributed to the
40 candidate from the Fund, provided that a candidate may accept in-kind contributions
41 from political party executive committees, up to an aggregate value of ten percent (10%)
42 of a candidate's base level of public financing as determined under subsection (h) of this
43 section. All revenues from qualifying contributions, public funds, or in-kind

1 contributions from a political party must be used for campaign-related purposes. The
2 Commission shall publish guidelines outlining permissible campaign-related
3 expenditures. A candidate shall return to the Fund any amount that is unspent and
4 uncommitted at the time that person ceases to be a candidate before a primary or election
5 for which the Fund money was distributed. A candidate shall return to the Fund any
6 amount that was unspent and uncommitted after the date of the primary election or
7 general election for which the Fund money was distributed.

8 (g) Timing of Fund Distribution. – The Commission shall distribute to certified
9 candidates revenues from the Fund in amounts determined under subsection (h) of this
10 section, minus any excess qualifying contributions, in the following manner:

11 (1) Within three business days after certification, for candidates certified
12 before the first Monday in February of the election year, revenues from
13 the Fund as if the candidates are in an uncontested primary election.

14 (2) Within three business days after the first Monday in February of the
15 election year, for primary election certified candidates, revenues from
16 the Fund according to whether the candidate is in a contested or
17 uncontested primary election, reduced by any amounts previously
18 distributed under subdivision (1) of this subsection.

19 (3) Within the earlier of the following: within three business days after the
20 primary election, or within three business days after the certification
21 pursuant to G.S. 163-122, 163-123, or 163-98 of the first opposition
22 candidate, for general election certified candidates, revenues from the
23 Fund according to whether the candidate is in a contested general
24 election. No funds are distributed for uncontested general elections.

25 Funds may be distributed to certified candidates under this section by any mechanism
26 that is expeditious, ensures accountability, and safeguards the integrity of the Fund.

27 (h) Amount of Fund Distribution. – By March 1, 2001, and no less frequently than
28 every two or four years thereafter, as appropriate, the Commission shall determine the
29 amount of funds to be distributed to participating candidates based on the type of election
30 and office as follows:

31 (1) Contested Primary Elections. – The amount of revenues to be
32 distributed is the average amount of campaign expenditures made by the
33 number of highest vote-receiving candidates equal to twice the number
34 of candidates to be nominated during all contested primary election
35 racers for the immediately preceding two primary elections for that
36 office, provided that each of the following shall be considered a separate
37 office for purposes of calculating the average:

38 a. Governor.

39 b. Lieutenant Governor and Attorney General shall be considered
40 together as one separate office.

41 c. Other offices in the Council of State shall be considered together
42 as one separate office.

43 d. State Senate district seats.

1 e. State Representative district seats.

2 (2) Uncontested Primary Elections. – The amount of revenues to be
3 distributed is the average amount of campaign expenditures made by
4 each candidate during all uncontested primary election races, or for
5 contested races if the amount is lower, for the immediately preceding
6 two primary elections for that office as defined in subdivision (1) of this
7 subsection.

8 (3) Contested General Elections. – The amount of revenues to be distributed
9 is the average amount of campaign expenditures made by the number of
10 highest vote-receiving candidates equal to twice the number to be
11 elected during all contested general election races for the immediately
12 preceding two general elections for that office as defined in subdivision
13 (1) of this subsection.

14 (4) Uncontested General Elections. – No revenues shall be distributed for
15 uncontested general elections.

16 The average for Senate races shall be calculated using all the applicable Senate races in
17 the State, rather than those in the same district. The same method shall be used for House
18 races. If the immediately preceding two election cycles do not contain sufficient data for
19 the Commission to determine the amount to be distributed for an office, the Commission
20 shall use data from the most recent applicable elections for that office. If no applicable
21 elections for that office contain sufficient data, the Commission shall set an amount based
22 on data from elections for comparable offices.

23 (i) Reporting by Noncertified Candidates. – Any noncertified candidate who has
24 as an opponent a certified candidate shall report to the Commission 20 days before an
25 election a statement of the amount that the noncertified candidate intends to spend for
26 that election, as well as the total amount raised and borrowed to date. Any noncertified
27 candidate with a certified opponent shall report electronically to the Commission within
28 24 hours after the total amount of expenditures or obligations made, or funds raised or
29 borrowed, exceeds the base level of public funding described in subsection (h) of this
30 section. Reports required by this subsection shall be made according to procedures
31 developed by the Commission.

32 (j) Matching Funds. – When any campaign, finance, or election report or group of
33 reports shows that the sum of a noncertified candidate's actual or estimated expenditures
34 or obligations made, or funds raised or borrowed, whichever is greater, exceeds the
35 amount described under subsection (h) of this section, the Commission shall issue
36 immediately to any opposing certified candidate an additional amount equivalent to the
37 reported excess within the limits set forth in this subsection. Total matching funds to a
38 certified candidate in an election are limited to an amount equal to the amount described
39 in subdivisions (1) or (3) of subsection (h), whichever is applicable.

40 (k) Unaffiliated Candidates. – Unaffiliated candidates certified pursuant to G.S.
41 163-122 before noon on the first Monday in February of the election year shall be eligible
42 for revenues from the Fund in the same amounts and at the same time as uncontested
43 primary election candidates and general election candidates as specified in subsections

1 (g) and (h) of this section. For unaffiliated candidates not certified by noon on the first
2 Monday in February, the deadline for filing qualifying contributions is noon on the last
3 Friday in June of the election year. Unaffiliated candidates certified after noon on the
4 first Friday in February shall be eligible for revenues from the Fund in the same amounts
5 as general election candidates, as specified in subsections (g) and (h).

6 (l) Reporting by Participating and Certified Candidates. – Notwithstanding other
7 provisions of law, participating and certified candidates shall report any money collected,
8 all campaign expenditures, obligations, and related activities to the Commission
9 according to procedures developed by the Commission. Upon the filing of a final report
10 for any losing primary election, special election, or general election, each candidate who
11 has revenues from the Fund remaining unspent shall return all revenues to the
12 Commission. In developing these procedures, the Commission shall utilize existing
13 campaign reporting procedures wherever practicable. The Commission shall ensure
14 timely public access to campaign finance data and may utilize electronic means of
15 reporting and storing information.

16 (m) Other Procedures. – For races involving special elections, recounts, vacancies,
17 withdrawals, or replacement candidates, the Commission shall establish by rule
18 procedures for qualification, certification, disbursement of Fund revenues, and return of
19 unspent Fund revenues.

20 (n) Appeals. – The procedure for challenging a certification decision by the
21 Commission is as follows:

22 (1) A person aggrieved by a certification decision may appeal to the full
23 Commission within three business days of the certification decision.
24 The appeal shall be in writing and shall set forth the reasons for the
25 appeal.

26 (2) Within five business days after an appeal is properly made, and after
27 due notice is given to the parties, the Commission shall hold a hearing.
28 The appellant has the burden of providing evidence to demonstrate that
29 the Commission's decision was improper. The Commission shall rule
30 on the appeal within three business days after the completion of the
31 hearing.

32 **§ 163-278.65. The Commission on Election Practices.**

33 (a) Establishment of the Commission. – There is established under the State Board
34 of Elections the North Carolina Commission on Election Practices.

35 (b) Membership. – The Commission shall consist of five members to be appointed
36 as follows:

37 (1) By March 31, 2000, and as needed thereafter, the Governor, with the
38 advice of the President Pro Tempore of the Senate and the Speaker of
39 the House of Representatives, shall establish and publish a nomination
40 period for members of the public, groups, and organizations to nominate
41 individuals to the Governor for appointment to the Commission.

42 (2) The Governor shall appoint the members of the Commission, taking
43 into consideration nominations made during the nomination period,

1 subject to confirmation by the General Assembly by joint resolution.
2 No more than two Commission members shall be affiliated with the
3 same political party. No elected official or candidate for elective office
4 shall be eligible to be a member of the Commission. The Commission
5 members shall be appointed and confirmed by September 1, 2000.

6 (3) Of the initial appointees, two are appointed for one-year terms, two are
7 appointed for two-year terms, and one is appointed for a three-year term
8 according to random lot under the supervision of the Secretary of State.
9 Thereafter, appointees are appointed to serve four-year terms. A person
10 may not serve more than two full terms. The appointed members
11 receive the legislative per diem pursuant to G.S. 120-3.1.

12 (4) One of the Commission members shall be elected by the members as
13 chair.

14 (5) A vacancy during an unexpired term must be filled as provided in this
15 subsection, but only for the unexpired portion of the term.

16 (c) Staffing of Commission. – The Executive Secretary-Director of the State
17 Board of Elections shall be the Director of the Commission. The State Board of Elections
18 shall provide staffing for the Commission.

19 **"§ 163-278.66. Commission to adopt rules.**

20 The Commission shall adopt rules to ensure effective administration of this Article.
21 Such rules shall include, but not be limited to, procedures for obtaining qualifying
22 contributions, certification as a Clean Election Act candidate, addressing circumstances
23 involving special elections, vacancies, recounts, withdrawals, or replacements, collection
24 of revenues for the Fund, distribution of Fund revenue to certified candidates, return of
25 unspent Fund disbursements, and compliance with the Clean Election Act.

26 **"§ 163-278.67. Violations.**

27 (a) Civil Penalty. – In addition to any other penalties that may be applicable, any
28 person who violates any provision of this Article is subject to a civil penalty of up to ten
29 thousand dollars (\$10,000) per violation. In addition to any fine, for good cause shown, a
30 candidate found in violation of this Article may be required to return to the Fund all
31 amounts distributed to the candidate from the Fund. If the Commission makes a
32 determination that a violation of this Article has occurred, the Commission shall impose a
33 fine or transmit the finding to the Attorney General for prosecution. Fines paid under this
34 section must be deposited in the Fund. In determining whether or not a candidate is in
35 violation of the expenditure limits of this Article, the Commission may consider as a
36 mitigating factor any circumstances out of the person's control.

37 (b) Class I Felony. – Any person who willfully or knowingly violates this Article
38 or rules of the Commission or knowingly makes a false statement in any report required
39 by this Article is guilty of a Class I felony and, if certified as a Clean Election Act
40 candidate, must return to the Fund all amounts distributed to the candidate."

41 Section 2. Article 22C of Chapter 163 of the General Statutes is repealed.

42 Section 3.(a) G.S. 105-269.6 reads as rewritten:

1 **"§ 105-269.6. Contribution of individual income tax refund to ~~Candidates Financing~~**
2 **~~Fund.~~ the North Carolina Clean Election Fund.**

3 An individual entitled to a refund of income taxes under Division II of Article 4 of
4 this Chapter may elect to contribute all or part of the refund to the ~~North Carolina~~
5 ~~Candidates Financing Fund for the use of political campaigns as provided in Article 22C of~~
6 ~~Chapter 163 of the General Statutes.~~ North Carolina Clean Election Fund created in Article
7 22D of Chapter 163 of the General Statutes. ~~The Secretary of Revenue shall provide~~
8 appropriate language and space on the individual income tax form in which to make the
9 election. The election becomes irrevocable upon filing the individual's income tax return
10 for the taxable year. ~~The Secretary of Revenue shall, on a quarterly basis, transmit the~~
11 ~~contributions made pursuant to this section to the State Treasurer for credit to the North~~
12 ~~Carolina Candidates Financing Fund.~~ North Carolina Clean Election Fund. ~~Any interest~~
13 ~~earned on funds so credited shall be credited to the Fund."~~

14 Section 3.(b) The Secretary of Revenue shall transfer to the North Carolina Clean
15 Election Fund any funds contributed to the North Carolina Candidates Financing Fund
16 pursuant to G.S. 105-269.6 before its amendment by this section but not yet transferred to
17 that Fund.

18 Section 4. G.S. 163-278.13 is amended by adding a new subsection to read:

19 "(e2) In order to make meaningful the provisions of the North Carolina Clean
20 Election Act, as set forth in Article 22D of this Chapter, no candidate for Governor, for
21 Lieutenant Governor, for any other office in the Council of State, or for the General
22 Assembly shall accept a contribution during the period beginning 21 days before the day
23 of the general election and ending the day after the general election. No contributor shall
24 make a contribution to a candidate for Governor, for Lieutenant Governor, for any other
25 office in the Council of State, or for the General Assembly during the period beginning
26 21 days before the general election and ending the day after the general election. The
27 prohibitions in this subsection shall also apply to a political committee the principal
28 purpose of which is to support a candidate for those offices. Nothing in this subsection
29 shall prohibit a candidate from making a contribution or loan secured entirely by that
30 candidate's assets to that candidate's own campaign or to a political committee the
31 principal purpose of which is to support that candidate's campaign. This subsection
32 applies with respect to a candidate only if both of the following statements are true
33 regarding that candidate:

34 (1) That candidate is opposed in the general election by a certified
35 candidate as defined in Article 22D of this Chapter.

36 (2) That certified candidate has not received the maximum matching funds
37 available under G.S. 163-278.64(j).

38 The recipient of a contribution that apparently violates this subsection has five days to
39 return the contribution or file a detailed statement with the N.C. Commission on Election
40 Practices explaining why the contribution does not violate this subsection."

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

1 Section 6. There is appropriated from the General Fund to the State Board of
2 Elections the sum of fifty thousand dollars (\$50,000) for the 1999-2000 fiscal year and
3 the sum of fifty thousand dollars (\$50,000) for the 2000-2001 fiscal year for the
4 administration of this act.

5 Section 7. Section 4 of this act becomes effective January 1, 2002, and applies
6 to general elections for Governor, Lieutenant Governor, other Council of State offices,
7 and the General Assembly after that date. The remainder of this act is effective when this
8 act becomes law.