

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1128

Short Title: Voter-Owned Elections.

(Public)

Sponsors: Senators Clodfelter; and Graham.

Referred to: Select Committee on Government and Election Reform.

March 22, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE CANDIDATES FOR CERTAIN COUNCIL OF STATE
3 OFFICES WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A
4 PUBLICLY SUPPORTED FUND, PROVIDED THAT THEY GAIN
5 AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT
6 THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; AND
7 TO IMPOSE A REGULATORY SURCHARGE TO FINANCE THE FUND.

8 The General Assembly of North Carolina enacts:

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

11 "Article 22G.

12 "The Voter-Owned Elections Act.

13 "**§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

14 The purpose of this Article is to ensure the vitality and fairness of democratic
15 elections in North Carolina, to the end that any eligible citizen of this State can
16 realistically choose to seek and run for public office. It is also the purpose of this Article
17 to protect the constitutional rights of voters and candidates from the detrimental effects
18 of increasingly large amounts of money being raised and spent in North Carolina to
19 influence the outcome of elections. It is essential to the public interest that the potential
20 for corruption or the appearance of corruption is minimized and that the equal and
21 meaningful participation of all citizens in the democratic process is ensured.
22 Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as
23 an alternative source of campaign financing for candidates who obtain a sufficient
24 number of qualifying contributions from registered voters and who voluntarily accept
25 strict fund-raising and spending limits. This Article is available to candidates for the
26 Council of State offices of Secretary of State, Auditor, Treasurer, Superintendent of
27 Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of
28 Labor, and Commissioner of Insurance in elections to be held in 2012 and thereafter.

29 "**§ 163-278.96. Definitions.**

1 The following definitions apply in this Article:

- 2 (1) Board. – The State Board of Elections.
- 3 (2) Campaign-related expenditure. – An expenditure that benefits the
4 candidate's current campaign in accordance with guidelines established
5 by the Board.
- 6 (3) Candidate. – An individual who becomes a candidate as described in
7 G.S. 163-278.6(4). The term includes a "candidate campaign
8 committee" as defined in G.S. 163-278.38Z(3).
- 9 (4) Certified candidate. – A candidate for office who chooses to receive
10 campaign funds from the Fund and who is certified under
11 G.S. 163-278.98(c).
- 12 (5) Contested primary and contested general election. – An election in
13 which there are more candidates than the number to be elected.
- 14 (6) Contribution. – Defined in G.S. 163-278.6. A distribution from the
15 Fund pursuant to this Article is not a 'contribution' and is not subject to
16 the limitations of G.S. 163-278.13 or the prohibitions of
17 G.S. 163-278.15 or G.S. 163-278.19.
- 18 (7) Expenditure. – Defined in G.S. 163-278.6.
- 19 (8) Fund. – The North Carolina Voter-Owned Elections Fund established
20 in G.S. 163-278.97.
- 21 (9) Independent expenditure. – Defined in G.S. 163-278.6.
- 22 (10) Maximum qualifying contributions. – An amount equal to two hundred
23 thousand dollars (\$200,000).
- 24 (11) Nonparticipating candidate. – A candidate for office who is not
25 seeking to be certified under G.S. 163-278.98(c).
- 26 (12) Office. – The Council of State offices of Secretary of State, Auditor,
27 Treasurer, Superintendent of Public Instruction, Attorney General,
28 Commissioner of Agriculture, Commissioner of Labor, and
29 Commissioner of Insurance.
- 30 (13) Participating candidate. – A candidate for office who has filed a
31 declaration of intent to participate under G.S. 163-278.98(a).
- 32 (14) Political committee. – Defined in G.S. 163-278.6.
- 33 (15) Qualifying contribution. – A contribution of not less than ten dollars
34 (\$10.00) and not more than one hundred dollars (\$100.00) in the form
35 of a check or money order to the candidate or the candidate's
36 committee that meets both of the following conditions:
- 37 a. Made by any registered voter in this State.
- 38 b. Made only during the qualifying period and obtained with the
39 approval of the candidate or candidate's committee.
- 40 c. Acknowledged by a written receipt, on a multicopy form
41 approved by the Board, which identifies the complete name,
42 residence address, and county of residence of the contributor
43 and the amount and date of the contribution made; states that
44 the contributor is a registered voter; states that the contributor

1 authorizes the candidate to use the contribution to qualify to
2 receive funds from the Fund; and is signed by the candidate or
3 the candidate's representative.

4 (16) Qualifying period. – The period beginning 300 days before the close of
5 the filing period for candidates for party nomination for the office and
6 ending on the day of the primary.

7 (17) Trigger for rescue funds. – The dollar amount at which rescue funds
8 are released for certified candidates. In the case of a contested primary,
9 the trigger equals one hundred fifty thousand dollars (\$150,000). In the
10 case of a contested general election, the trigger equals the base level of
11 funding available under G.S. 163-278.99(b)(2).

12 **"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.**

13 (a) Establishment of Fund. – The North Carolina Voter-Owned Elections Fund is
14 established to finance the election campaigns of certified candidates for office and to
15 pay administrative and enforcement costs of the Board related to this Article. The Fund
16 is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the
17 Fund is credited to the Fund. The Board shall administer the Fund.

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

20 (1) Unspent Fund revenues distributed for an election that remain unspent
21 or uncommitted at the time the recipient is no longer a certified
22 candidate in the election.

23 (2) Voluntary donations made directly to the Fund.

24 (3) Regulatory surcharges in accordance with Article 2E of Chapter 105 of
25 the General Statutes.

26 (c) Determination of Fund Amount. – By January 1, 2011, and every two years
27 thereafter, the Board, in conjunction with the Advisory Council established under
28 G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on
29 Governmental Operations of the General Assembly a report documenting, evaluating,
30 and making recommendations relating to the administration, implementation, and
31 enforcement of the Voter-Owned Elections Act. In its report, the Board shall set out the
32 funds received to date and the expected needs of the Fund during the next election
33 cycle.

34 **"§ 163-278.98. Requirements for participation.**

35 (a) Declaration of Intent to Participate. – Any individual choosing to receive
36 campaign funds from the Fund shall first file with the Board a declaration of intent to
37 participate in the act as a candidate for a stated office. The declaration of intent shall be
38 filed before or during the qualifying period and before collecting any qualifying
39 contributions. In the declaration, the candidate shall swear or affirm that only one
40 political committee, identified with its treasurer, shall handle all contributions,
41 campaign-related expenditures, and obligations for the participating candidate and that
42 the candidate will comply with the contribution and expenditure limits set forth in
43 subsection (e) of this section and all other requirements set forth in this Article or
44 adopted by the Board. Failure to comply is a violation of this Article.

1 (b) Demonstration of Support of Candidacy. – In order to be certified,
2 participating candidates must obtain qualifying contributions from at least 2,000
3 registered voters in this State. No more than a third of a candidate's qualifying
4 contributions submitted to the Board for purposes of certification shall come from
5 registered voters who are residents of the same congressional district. No payment, gift,
6 or anything of value shall be given in exchange for a qualifying contribution.

7 (c) Certification of Candidates. – Upon receipt of a submittal of the record of
8 qualifying contributions by a participating candidate, the Board shall determine whether
9 or not the candidate has:

- 10 (1) Filed a completed declaration of intent to participate in this Article.
- 11 (2) Submitted copies of the appropriate number of forms described in
12 G.S. 163-278.96(15) signed by contributors who are registered voters,
13 which the Board shall verify through a random sample or other means
14 it adopts.
- 15 (3) Filed a notice of candidacy with the State Board of Elections as a
16 candidate for the office.
- 17 (4) Otherwise met the requirements for participation in this Article.

18 The Board shall certify candidates complying with the requirements of this section
19 as soon as possible and no later than five business days after receipt of a satisfactory
20 record of qualifying contributions.

21 (d) Final Report for Qualifying Contributions. – No later than five business days
22 after the end of the qualifying period, all participating candidates shall submit a report
23 to the Board of all previously unreported qualifying contributions, together with copies
24 of the contribution forms described in G.S. 163-278.96(15), in accordance with
25 procedures developed by the Board. Within seven business days after submittal of the
26 final report, the Board shall determine, through a random audit or other means it adopts,
27 whether the contributions abide by the definition of qualifying contributions, whether
28 they must be returned to the donor, and whether they exceed the maximum amount of
29 qualifying contributions.

30 (e) Restrictions on Contributions and Expenditures for Participating and Certified
31 Candidates. – The following restrictions shall apply to contributions and expenditures
32 with respect to participating and certified candidates:

- 33 (1) Beginning January 1 of the year before the election and before filing a
34 declaration of intent, a candidate shall limit campaign-related
35 expenditures to ten thousand dollars (\$10,000) and shall not accept
36 more than ten thousand dollars (\$10,000) from sources and in amounts
37 permitted by Article 22A of this Chapter. A candidate who exceeds
38 either of these limits shall be ineligible to file a declaration of intent or
39 receive funds from the Fund.
- 40 (2) From the filing of a declaration of intent through the end of the
41 qualifying period, a candidate may accept only qualifying
42 contributions, contributions under ten dollars (\$10.00) from North
43 Carolina voters, in-kind party contributions as permitted in subdivision
44 (4) of this subsection, and personal and family contributions permitted

1 under subdivision (4a) of this subsection. The total contributions the
2 candidate may accept during this period shall not exceed the maximum
3 qualifying contributions for that candidate. In addition to these
4 contributions, the candidate may only expend during this period the
5 remaining money raised pursuant to subdivision (1) of this subsection
6 and possible rescue funds received pursuant to G.S. 163-278.101.

7 (3) After the qualifying period and through the date of the general
8 election, the candidate shall cease campaign-related fund-raising
9 activities and shall expend only the funds the candidate receives from
10 the Fund pursuant to G.S. 163-278.99(b)(2) plus any funds remaining
11 from the qualifying period and possible rescue funds.

12 (4) In addition to the amounts above, a candidate may accept in-kind
13 contributions from political party executive committees, up to an
14 aggregate value of thirty thousand dollars (\$30,000) for the election
15 cycle.

16 (4a) During the qualifying period, the candidate may contribute up to one
17 thousand dollars (\$1,000) of that candidate's own money to the
18 campaign. Debt incurred by the candidate for a campaign expenditure
19 shall count toward that limit. The candidate may accept in
20 contributions one thousand dollars (\$1,000) from each member of that
21 candidate's family consisting of spouse, parent, child, brother, and
22 sister.

23 (5) A candidate and the candidate's committee shall limit the use of all
24 revenues permitted by this subsection to expenditures for
25 campaign-related purposes only. The Board shall publish guidelines
26 outlining permissible campaign-related expenditures.

27 (6) Any contribution received by a participating or certified candidate that
28 falls outside that permitted by this subsection shall be returned to the
29 donor as soon as practicable. Contributions intentionally made,
30 solicited, or accepted in violation of this Article are subject to civil
31 penalties as specified in G.S. 163-278.103. The funds involved shall be
32 forfeited to the Civil Penalty and Forfeiture Fund.

33 (7) A candidate shall return to the Fund any amount distributed for an
34 election that is unspent and uncommitted at the date of the election, or
35 at the time the individual ceases to be a certified candidate, whichever
36 occurs first. For accounting purposes, all qualifying, personal, and
37 family contributions shall be considered spent before revenue from the
38 Fund is spent or committed.

39 (f) Revocation. – A candidate may revoke, in writing to the Board, a decision to
40 participate in the Fund at anytime. After a revocation, that candidate may accept and
41 expend outside the limits of this Article without violating this Article. Within 10 days
42 after revocation, a candidate shall return to the Board all money received from the Fund.

43 **"§ 163-278.99. Distribution from the Fund.**

44 (a) Timing of Fund Distribution. – The Board shall distribute to certified

1 candidates amounts from the Fund specified under subsection (b) of this section on the
2 following schedule:

3 (1) For candidates in contested primary elections, the later of the
4 following: within two business days after the date set in
5 G.S. 163-106(c) deadline for candidate filing in the election year or
6 within two business days of the time the candidate becomes certified in
7 accordance with G.S. 163-278.98(c).

8 (2) For candidates in contested general elections, the later of the
9 following: within seven business days after receiving the candidate's
10 final report of qualifying contributions or within two business days
11 after the certification pursuant to G.S. 163-122, 163-123, or 163-98 of
12 the first opposition candidate.

13 (b) Amount of Fund Distribution. – By April 1, 2011, and no less frequently than
14 every four years thereafter, the Board shall determine the base level of funds to be
15 distributed to certified candidates. No funds are distributed for uncontested elections.
16 The actual amount distributed to a certified candidate is the base level of funds reduced
17 by any qualifying contributions raised above the maximum amount of qualifying
18 contributions. The base level is determined in the following manner and rounded to the
19 nearest one hundred dollars (\$100.00):

20 (1) Contested primary elections. – The base level of funds is the median
21 amount of campaign-related expenditures made by all major party
22 candidates who reported campaign expenditures for contested primary
23 races for the immediately preceding two primaries for that office, but
24 not less than fifty thousand dollars (\$50,000).

25 (2) Contested general elections. – The base level of funds is the median
26 amount of campaign-related expenditures made by all major party
27 candidates who reported campaign expenditures for contested general
28 election races for the immediately preceding two general elections for
29 that office, but not less than three hundred thousand dollars
30 (\$300,000).

31 (c) Method of Fund Distribution. – The Board, in consultation with the State
32 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying
33 funds to certified candidates. In all cases, the Board shall distribute funds to certified
34 candidates in a manner that is expeditious, ensures accountability, and safeguards the
35 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified
36 candidates, then the available money shall be distributed proportionally, according to
37 each candidate's eligible funding, and the candidate may raise additional money in the
38 same manner as a noncertified candidate for the same office up to the unfunded amount
39 of the candidate's eligible funding.

40 **"§ 163-278.100. Reporting requirements.**

41 (a) Reporting by Noncertified Candidates and Independent Expenditure Entities.
42 – Any noncertified candidate with a certified opponent shall report total income,
43 expenses, and obligations to the Board by facsimile machine or electronically within 24
44 hours after the total amount of campaign-related expenditures or obligations made, or

1 funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds
2 as defined in G.S. 163-278.96(17). Any entity making independent expenditures in
3 support of or opposition to a certified candidate, or in support of a candidate opposing a
4 certified candidate, shall report the total funds received, spent, or obligated for those
5 expenditures to the Board by facsimile machine or electronically within 24 hours after
6 the total amount of expenditures or obligations made, or funds raised or borrowed, for
7 the purpose of making the independent expenditures, exceeds five thousand dollars
8 (\$5,000). After this 24-hour filing, the noncertified candidate or independent
9 expenditure entity shall comply with an expedited reporting schedule by filing
10 additional reports after receiving each additional amount in excess of one thousand
11 dollars (\$1,000) or after making or obligating to make each additional expenditure in
12 excess of one thousand dollars (\$1,000). The schedule and forms for reports required by
13 this subsection shall be made according to procedures developed by the Board.

14 (b) Reporting by Participating and Certified Candidates. – Notwithstanding other
15 provisions of law, participating and certified candidates shall report any money received
16 and all campaign expenditures, obligations, and related activities to the Board according
17 to procedures developed by the Board. Upon the filing of a final report for any losing
18 primary election, special election, or general election, each candidate who has revenues
19 from the Fund remaining unspent shall return those revenues to the Board. In
20 developing these procedures, the Board shall utilize existing campaign reporting
21 procedures wherever practicable.

22 (c) Timely Access to Reports. – The Board shall ensure prompt public access to
23 the reports received in accordance with this Article. The Board may utilize electronic
24 means of reporting and storing information.

25 **"§ 163-278.101. Rescue funds.**

26 (a) When Rescue Funds Become Available. – When any report or group of
27 reports shows that 'funds in opposition to a certified candidate or in support of an
28 opponent to that candidate' as described in this section, exceed the trigger for rescue
29 funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that
30 certified candidate an additional amount equal to the reported excess within the limits
31 set forth in this section. 'Funds in opposition to a certified candidate or in support of an
32 opponent to that candidate' shall be equal to the sum of the following:

33 (1) Campaign expenditures or obligations made, or funds raised or
34 borrowed, whichever is greater, reported by any one uncertified
35 opponent of a certified candidate. Where a certified candidate has
36 more than one uncertified opponent, the measure shall be taken from
37 the uncertified candidate showing the highest relevant dollar amount.

38 (2) The sum of all expenditures reported in accordance with
39 G.S. 163-278.100(a) of entities making independent expenditures in
40 opposition to the certified candidate or in support of any opponent of
41 that certified candidate.

42 (b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a
43 certified candidate in a contested primary shall be limited to an amount equal to two
44 times the maximum qualifying contributions.

1 (c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to
2 a certified candidate in a contested general election shall be limited to an amount equal
3 to two times the amount described in G.S. 163-278.99(b)(2).

4 **"§ 163-278.102. Unaffiliated and new-party candidates.**

5 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates
6 certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the
7 same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated
8 candidates and new-party candidates not certified to appear on the ballot by noon on the
9 date set in G.S. 163-106(c) deadline for candidate filing in the election year, the
10 deadline for seeking certification to receive revenue from the Fund is noon on the first
11 business day of July of the election year.

12 **"§ 163-278.103. Enforcement by the Board; civil penalty.**

13 The Board, with the advice of the Advisory Council established under
14 G.S. 163.278.68(b), shall administer the provisions of this Article in the same manner as
15 described in Article 22D of this Chapter. In addition to any other penalties that may be
16 applicable, any individual, political committee, or other entity that violates any
17 provision of this Article is subject to a civil penalty in the same manner as described in
18 Article 22D of this Chapter."

19 **SECTION 2.** G.S. 163-278.13(e) reads as rewritten:

20 "(e) ~~This~~ Except as provided in subsection (e3) of this section, this section shall
21 not apply to any national, State, district or county executive committee of any political
22 party. For the purposes of this section only, the term "political party" means only those
23 political parties officially recognized under G.S. 163-96."

24 **SECTION 3.** G.S. 163-278.13 is amended by adding a new subsection to
25 read:

26 "(e3) In order to make meaningful the provisions of the North Carolina
27 Voter-Owned Elections Act, as set forth in Article 22G of this Chapter, no candidate for
28 any office that is in that current election subject to the provisions of Article 22G of this
29 Chapter shall accept a contribution during the period beginning 21 days before the day
30 of the general election and ending the day after the general election. No contributor
31 shall make a contribution to a candidate for any office that is in that current election
32 subject to the provisions of Article 22G of this Chapter during the period beginning 21
33 days before the general election and ending the day after the general election. The
34 prohibitions in this subsection shall also apply to a political committee the principal
35 purpose of which is to support a candidate for those offices. Nothing in this subsection
36 shall prohibit a candidate from making a contribution or loan secured entirely by that
37 candidate's assets to that candidate's own campaign or to a political committee the
38 principal purpose of which is to support that candidate's campaign. This subsection
39 applies with respect to a candidate only if both of the following statements are true
40 regarding that candidate:

41 (1) That candidate is opposed in the general election by a certified
42 candidate as defined in Article 22G of this Chapter.

43 (2) That certified candidate has not received the maximum rescue funds
44 available under G.S. 163-278.101(c).

