

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS35186-RR-35 (3/21)

Short Title: Voter-Owned Elections.

(Public)

Sponsors: Senator Gulley.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CANDIDATES FOR CERTAIN COUNCIL OF STATE OFFICES WITH THE OPTION OF FINANCING THEIR CAMPAIGNS FROM A PUBLICLY SUPPORTED FUND, PROVIDED THAT THEY GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT THEY ABIDE BY STRICT 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 22E.

"The Voter-Owned Elections Act.

§ 163-278.75. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina, to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance in elections to be held in 2008 and thereafter.

1 **"§ 163-278.76. Definitions.**

2 The following definitions apply in this Article:

- 3 (1) Board. – The State Board of Elections.
- 4 (2) Campaign-related expenditure. – An expenditure that benefits the
5 candidate's current campaign in accordance with guidelines established
6 by the Board.
- 7 (3) Candidate. – An individual who becomes a candidate as described in
8 G.S. 163-278.6(4). The term includes a political committee authorized
9 by the candidate for that candidate's election.
- 10 (4) Certified candidate. – A candidate for office who chooses to receive
11 campaign funds from the Fund and who is certified under G.S.
12 163-278.78(c).
- 13 (5) Contested primary and contested general election. – An election in
14 which there are more candidates than the number to be elected.
- 15 (6) Contribution. – Defined in G.S. 163-278.6. A distribution from the
16 Fund pursuant to this Article is not a 'contribution' and is not subject to
17 the limitations of G.S. 163-278.13 or the prohibitions of G.S.
18 163-278.15 or G.S. 163-278.19.
- 19 (7) Expenditure. – Defined in G.S. 163-278.6.
- 20 (8) Fund. – The North Carolina Voter-Owned Elections Fund established
21 in G.S. 163-278.77.
- 22 (9) Independent expenditure. – Defined in G.S. 163-278.6.
- 23 (10) Maximum qualifying contributions. – An amount equal to two hundred
24 thousand dollars (\$200,000).
- 25 (11) Nonparticipating candidate. – A candidate for office who is not
26 seeking to be certified under G.S. 163-278.78(c).
- 27 (12) Office. – The Council of State offices of Secretary of State, Auditor,
28 Treasurer, Superintendent of Public Instruction, Attorney General,
29 Commissioner of Agriculture, Commissioner of Labor, and
30 Commissioner of Insurance.
- 31 (13) Participating candidate. – A candidate for office who has filed a
32 declaration of intent to participate under G.S. 163-278.78(a).
- 33 (14) Political committee. – Defined in G.S. 163-278.6.
- 34 (15) Qualifying contribution. – A contribution of not less than ten dollars
35 (\$10.00) and not more than one hundred dollars (\$100.00) in the form
36 of a check or money order to the candidate or the candidate's
37 committee that meets both of the following conditions:
- 38 a. Made by any registered voter in this State.
- 39 b. Made only during the qualifying period and obtained with the
40 approval of the candidate or candidate's committee.
- 41 c. Acknowledged by a written receipt, on a multicopy form
42 approved by the Board, which identifies the complete name,
43 residence address, and county of residence of the contributor
44 and the amount and date of the contribution made; states that

1 the contributor is a registered voter; states that the contributor
2 authorizes the candidate to use the contribution to qualify to
3 receive funds from the Fund; and is signed by the candidate or
4 the candidate's representative.

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

8 (17) Trigger for rescue funds. – The dollar amount at which rescue funds
9 are released for certified candidates. In the case of a contested primary,
10 the trigger equals one hundred fifty thousand dollars (\$150,000). In the
11 case of a contested general election, the trigger equals the base level of
12 funding available under G.S. 163-278.79(b)(2).

13 **"§ 163-278.77. Voter-Owned Elections Fund established; sources of funding.**

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

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

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

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

25 (3) General Fund monies appropriated for the use of the Fund by the
26 General Assembly pursuant to subsection (c) of this section.

27 (c) Determination of Fund Amount. – By April 1, 2005, and every two years
28 thereafter, the Board, in conjunction with the Advisory Council established under G.S.
29 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on
30 Governmental Operations of the General Assembly a report documenting, evaluating,
31 and making recommendations relating to the administration, implementation, and
32 enforcement of the Voter-Owned Elections Act. In its report, the Board shall set out the
33 funds received to date, the expected needs of the Fund during the next election cycle,
34 and the amount of the appropriation from the General Assembly needed for the effective
35 operation of the Fund. The General Assembly shall include in its appropriations from
36 the General Fund at least the amount that the Board states in its report will be needed,
37 but the average annual appropriation over a four-year period shall not exceed the
38 equivalent of one penny a week per voting-age resident of North Carolina.

39 **"§ 163-278.78. Requirements for participation.**

40 (a) Declaration of Intent To Participate. – Any individual choosing to receive
41 campaign funds from the Fund shall first file with the Board a declaration of intent to
42 participate in the act as a candidate for a stated office. The declaration of intent shall be
43 filed before or during the qualifying period and before collecting any qualifying
44 contributions. In the declaration, the candidate shall swear or affirm that only one

1 political committee, identified with its treasurer, shall handle all contributions,
2 campaign-related expenditures, and obligations for the participating candidate and that
3 the candidate will comply with the contribution and expenditure limits set forth in
4 subsection (e) of this section and all other requirements set forth in this Article or
5 adopted by the Board. Failure to comply is a violation of this Article.

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

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

- 15 (1) Filed a completed declaration of intent to participate in this Article.
- 16 (2) Submitted copies of the appropriate number of forms described in G.S.
17 163-278.76(15) signed by contributors who are registered voters,
18 which the Board shall verify through a random sample or other means
19 it adopts.
- 20 (3) Qualified as a candidate for the office.
- 21 (4) Otherwise met the requirements for participation in this Article.

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

25 (d) Final Report for Qualifying Contributions. – No later than five business days
26 after the end of the qualifying period, all participating candidates shall submit a report
27 to the Board of all previously unreported qualifying contributions, together with copies
28 of the contribution forms described in G.S. 163-278.76(15), in accordance with
29 procedures developed by the Board. Within seven business days after submittal of the
30 final report, the Board shall determine, through a random audit or other means it adopts,
31 whether the contributions abide by the definition of qualifying contributions, whether
32 they must be returned to the donor, and whether they exceed the maximum amount of
33 qualifying contributions.

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

- 37 (1) Beginning January 1 of the year before the election and before filing a
38 declaration of intent, a candidate shall limit campaign-related
39 expenditures to ten thousand dollars (\$10,000) and shall not accept
40 more than ten thousand dollars (\$10,000) from sources and in amounts
41 permitted by Article 22A of this Chapter. A candidate who exceeds
42 either of these limits shall be ineligible to file a declaration of intent or
43 receive funds from the Fund.
- 44 (2) From the filing of a declaration of intent through the end of the

1 qualifying period, a candidate shall accept only qualifying
2 contributions and shall expend no more than an amount equal to the
3 maximum qualifying contributions, not including possible rescue
4 funds or money raised pursuant to subdivision (1) of this subsection.

5 (3) After the qualifying period and through the date of the general
6 election, the candidate shall cease campaign-related fund-raising
7 activities and shall expend only the funds the candidate receives from
8 the Fund pursuant to G.S. 163-278.79(b)(2) plus any funds remaining
9 from the qualifying period and possible rescue funds.

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

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

18 (6) Any contribution received by a participating or certified candidate that
19 falls outside that permitted by this subsection shall be returned to the
20 donor as soon as practicable. Contributions intentionally made,
21 solicited, or accepted in violation of this Article are subject to civil
22 penalties as specified in G.S. 163-278.84. The funds involved shall be
23 forfeited to the Civil Penalty and Forfeiture Fund.

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

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

34 **"§ 163-278.79. Distribution from the Fund.**

35 (a) Timing of Fund Distribution. – The Board shall distribute to certified
36 candidates amounts from the Fund specified under subsection (b) of this section on the
37 following schedule:

38 (1) For candidates in contested primary elections, the later of the
39 following: within two business days after the first Monday in February
40 of the election year, or within two business days of the time the
41 candidate becomes certified in accordance with G.S. 163-278.78(c).

42 (2) For candidates in contested general elections, the later of the
43 following: within seven business days after receiving the candidate's
44 final report of qualifying contributions or within two business days

1 after the certification pursuant to G.S. 163-122, 163-123, or 163-98 of
2 the first opposition candidate.

3 (b) Amount of Fund Distribution. – By April 1, 2005, and no less frequently than
4 every four years thereafter, the Board shall determine the base level of funds to be
5 distributed to certified candidates. No funds are distributed for uncontested elections.
6 The actual amount distributed to a certified candidate is the base level of funds reduced
7 by any qualifying contributions raised above the maximum amount of qualifying
8 contributions. The base level is determined in the following manner and rounded to the
9 nearest one hundred dollars (\$100.00):

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

15 (2) Contested general elections. – The base level of funds is the median
16 amount of campaign-related expenditures made by all major party
17 candidates who reported campaign expenditures for contested general
18 election races for the immediately preceding two general elections for
19 that office, but not less than three hundred thousand dollars
20 (\$300,000).

21 (c) Method of Fund Distribution. – The Board, in consultation with the State
22 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying
23 funds to certified candidates. In all cases, the Board shall distribute funds to certified
24 candidates in a manner that is expeditious, ensures accountability, and safeguards the
25 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified
26 candidates, then the available money shall be distributed proportionally, according to
27 each candidate's eligible funding.

28 **"§ 163-278.80. Reporting requirements.**

29 (a) Reporting by Noncertified Candidates and Independent Expenditure Entities.
30 – Any noncertified candidate with a certified opponent shall report total income,
31 expenses, and obligations to the Board by facsimile machine or electronically within 24
32 hours after the total amount of campaign-related expenditures or obligations made, or
33 funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds
34 as defined in G.S. 163-278.76(17). Any entity making independent expenditures in
35 excess of three thousand dollars (\$3,000) in support of or opposition to a certified
36 candidate, or in support of a candidate opposing a certified candidate, shall report the
37 total funds received, spent, or obligated for those expenditures to the Board by facsimile
38 machine or electronically within 24 hours after the total amount of expenditures or
39 obligations made, or funds raised or borrowed, for the purpose of making the
40 independent expenditures, exceeds fifty percent (50%) of the trigger for rescue funds.
41 After this 24-hour filing, the noncertified candidate or independent expenditure entity
42 shall comply with an expedited reporting schedule by filing additional reports after
43 receiving each additional amount in excess of one thousand dollars (\$1,000) or after
44 making or obligating to make each additional expenditure in excess of one thousand

1 dollars (\$1,000). The schedule and forms for reports required by this subsection shall be
2 made according to procedures developed by the Board.

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

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

14 **"§ 163-278.81. Rescue funds.**

15 (a) When Rescue Funds Become Available. – When any report or group of
16 reports shows that 'funds in opposition to a certified candidate or in support of an
17 opponent to that candidate' as described in this section, exceed the trigger for rescue
18 funds as defined in G.S. 163-278.76(17), the Board shall issue immediately to that
19 certified candidate an additional amount equal to the reported excess within the limits
20 set forth in this section. 'Funds in opposition to a certified candidate or in support of an
21 opponent to that candidate' shall be equal to the sum of the following:

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

27 (2) The sum of all expenditures reported in accordance with G.S.
28 163-278.80(a) of entities making independent expenditures in
29 opposition to the certified candidate or in support of any opponent of
30 that certified candidate.

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

34 (c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to
35 a certified candidate in a contested general election shall be limited to an amount equal
36 to two times the amount described in G.S. 163-278.79(b)(2).

37 **"§ 163-278.82. Unaffiliated and new-party candidates.**

38 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates
39 certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the
40 same amounts and at the same time as specified in G.S. 163-278.79. For unaffiliated
41 candidates and new-party candidates not certified to appear on the ballot by noon on the
42 first Monday in February, the deadline for seeking certification to receive revenue from
43 the Fund is noon on the first business day of July of the election year.

44 **"§ 163-278.83. Enforcement by the Board; civil penalty.**

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

6 **SECTION 2.** G.S. 163-278.13 is amended by adding a new subsection to
7 read:

8 "(e3) In order to make meaningful the provisions of the North Carolina Voter-
9 Owned Elections Act, as set forth in Article 22E of this Chapter, no candidate for any
10 office that is in that current election subject to the provisions of Article 22E shall accept
11 a contribution during the period beginning 21 days before the day of the general election
12 and ending the day after the general election. No contributor shall make a contribution
13 to a candidate for any office that is in that current election subject to the provisions of
14 Article 22E during the period beginning 21 days before the general election and ending
15 the day after the general election. The prohibitions in this subsection shall also apply to
16 a political committee the principal purpose of which is to support a candidate for those
17 offices. Nothing in this subsection shall prohibit a candidate from making a contribution
18 or loan secured entirely by that candidate's assets to that candidate's own campaign or to
19 a political committee the principal purpose of which is to support that candidate's
20 campaign. This subsection applies with respect to a candidate only if both of the
21 following statements are true regarding that candidate:

- 22 (1) That candidate is opposed in the general election by a certified
23 candidate as defined in Article 22E of this Chapter.
24 (2) That certified candidate has not received the maximum rescue funds
25 available under G.S. 163-278.81(c).

26 The recipient of a contribution that apparently violates this subsection has three days
27 to return the contribution or file a detailed statement with the State Board of Elections
28 explaining why the contribution does not violate this subsection."

29 **SECTION 3.** The provisions of this act are severable. If any provision of
30 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
31 other provisions of the act that can be given effect without the invalid provision.

32 **SECTION 4.** There is appropriated from the General Fund to the State
33 Board of Elections the sum of twenty-five thousand dollars (\$25,000) for the 2003-2004
34 fiscal year and the sum of fifty thousand dollars (\$50,000) for the 2004-2005 fiscal year
35 for the administration of this act.

36 **SECTION 5.** This act applies to elections for Secretary of State, Auditor,
37 Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of
38 Agriculture, Commissioner of Labor, and Commissioner of Insurance in 2008 and
39 thereafter. Section 4 of this act becomes effective January 1, 2004. The remainder of
40 this act is effective when it becomes law.