

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

**S**

**1**

**SENATE BILL 1009**

Short Title: Voter-Owned Elections. (Public)

Sponsors: Senators Gulley; Bingham, Holloman, Kinnaird, Lucas, Metcalf, Purcell,  
and Reeves.

Referred to: Judiciary I.

April 3, 2003

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.

**"§ 163-278.76. 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 political committee authorized  
8           by the candidate for that candidate's election.
- 9           (4) Certified candidate. – A candidate for office who chooses to receive  
10           campaign funds from the Fund and who is certified under G.S.  
11           163-278.78(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 G.S.  
17           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. 163-278.77.
- 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. 163-278.78(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. 163-278.78(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. 163-278.79(b)(2).

12 **"§ 163-278.77. 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) General Fund monies appropriated for the use of the Fund by the  
25 General Assembly pursuant to subsection (c) of this section.

26 (c) Determination of Fund Amount. – By April 1, 2005, and every two years  
27 thereafter, the Board, in conjunction with the Advisory Council established under G.S.  
28 163-278.68(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, the expected needs of the Fund during the next election cycle,  
33 and the amount of the appropriation from the General Assembly needed for the effective  
34 operation of the Fund. The General Assembly shall include in its appropriations from  
35 the General Fund at least the amount that the Board states in its report will be needed,  
36 but the average annual appropriation over a four-year period shall not exceed the  
37 equivalent of one penny a week per voting-age resident of North Carolina.

38 **"§ 163-278.78. Requirements for participation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33           **"§ 163-278.79. Distribution from the Fund.**

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

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

41           (2) For candidates in contested general elections, the later of the  
42           following: within seven business days after receiving the candidate's  
43           final report of qualifying contributions or within two business days  
44           after the certification pursuant to G.S. 163-122, 163-123, or 163-98 of

1                   the first opposition candidate.

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

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

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

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

27 **"§ 163-278.80. Reporting requirements.**

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

1 made according to procedures developed by the Board.

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

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

13 **"§ 163-278.81. Rescue funds.**

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

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

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

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

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

36 **"§ 163-278.82. Unaffiliated and new-party candidates.**

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

43 **"§ 163-278.83. Enforcement by the Board; civil penalty.**

44 The Board, with the advice of the Advisory Council established under

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

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

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

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

23 (2) That certified candidate has not received the maximum rescue funds  
24 available under G.S. 163-278.81(c).

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

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

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

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