

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH30173-RRx-43A* (3/21)

Short Title: Voter-Owned Elections. (Public)

Sponsors: Representatives Alexander, Church, Earle, and Walker (Primary Sponsors).

Referred to:

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

1 Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of
2 Labor, and Commissioner of Insurance in elections to be held in 2008 and thereafter.

3 **"§ 163-278.96. Definitions.**

4 The following definitions apply in this Article:

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

1 residence address, and county of residence of the contributor
2 and the amount and date of the contribution made; states that
3 the contributor is a registered voter; states that the contributor
4 authorizes the candidate to use the contribution to qualify to
5 receive funds from the Fund; and is signed by the candidate or
6 the candidate's representative.

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

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

15 **"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.**

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

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

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

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

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

29 (c) Determination of Fund Amount. – By April 1, 2007, and every two years
30 thereafter, the Board, in conjunction with the Advisory Council established under
31 G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on
32 Governmental Operations of the General Assembly a report documenting, evaluating,
33 and making recommendations relating to the administration, implementation, and
34 enforcement of the Voter-Owned Elections Act. In its report, the Board shall set out the
35 funds received to date and the expected needs of the Fund during the next election
36 cycle.

37 **"§ 163-278.98. Requirements for participation.**

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

1 the candidate will comply with the contribution and expenditure limits set forth in
2 subsection (e) of this section and all other requirements set forth in this Article or
3 adopted by the Board. Failure to comply is a violation of this Article.

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

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

13 (1) Filed a completed declaration of intent to participate in this Article.

14 (2) Submitted copies of the appropriate number of forms described in
15 G.S. 163-278.96(15) signed by contributors who are registered voters,
16 which the Board shall verify through a random sample or other means
17 it adopts.

18 (3) Filed a notice of candidacy with the State Board of Elections as a
19 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. 163-278.96(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 up to an amount equal to the maximum
2 qualifying contributions for that candidate and, in addition, may
3 expend possible rescue funds and money raised pursuant to
4 subdivision (1) of this subsection. Contributions a candidate may
5 expend up to that limit shall be limited to qualifying contributions,
6 contributions from North Carolina registered voters that are under ten
7 dollars (\$10.00), and personal and family contributions permitted by
8 subdivision (4a) of this subsection.

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

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

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

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

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

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

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

1 **"§ 163-278.99. Distribution from the Fund.**

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

5 (1) For candidates in contested primary elections, the later of the
6 following: within two business days after the first Monday in February
7 of the election year, or within two business days of the time the
8 candidate becomes certified in accordance with G.S. 163-278.98(c).

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

14 (b) Amount of Fund Distribution. – By April 1, 2007, and no less frequently than
15 every four years thereafter, the Board shall determine the base level of funds to be
16 distributed to certified candidates. No funds are distributed for uncontested elections.
17 The actual amount distributed to a certified candidate is the base level of funds reduced
18 by any qualifying contributions raised above the maximum amount of qualifying
19 contributions. The base level is determined in the following manner and rounded to the
20 nearest one hundred dollars (\$100.00):

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

26 (2) Contested general elections. – The base level of funds is the median
27 amount of campaign-related expenditures made by all major party
28 candidates who reported campaign expenditures for contested general
29 election races for the immediately preceding two general elections for
30 that office, but not less than three hundred thousand dollars
31 (\$300,000).

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

41 **"§ 163-278.100. Reporting requirements.**

42 (a) Reporting by Noncertified Candidates and Independent Expenditure Entities.
43 – Any noncertified candidate with a certified opponent shall report total income,
44 expenses, and obligations to the Board by facsimile machine or electronically within 24

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

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

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

26 **"§ 163-278.101. Rescue funds.**

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

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

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

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

1 times the maximum qualifying contributions.

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

5 **"§ 163-278.102. Unaffiliated and new-party candidates.**

6 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates
7 certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the
8 same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated
9 candidates and new-party candidates not certified to appear on the ballot by noon on the
10 first Monday in February, the deadline for seeking certification to receive revenue from
11 the Fund is noon on the first 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).

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

4 **SECTION 4.** Chapter 105 of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 2E.

7 "Regulatory Surcharge.

8 **"§ 105-113.120. Surcharge imposed.**

9 (a) Surcharge. – A surcharge is imposed on a person who pays a regulatory
10 charge listed under G.S. 113-121. The surcharge imposed is equal to one percent (1%)
11 of the amount of the charge.

12 (b) Collection and Use. – The agency that collects a charge upon which the
13 surcharge imposed by this section is due, must collect the surcharge due under this
14 section at the same time. The head of each agency that collects a surcharge under this
15 section must remit the proceeds of the surcharge to the Department of Revenue on a
16 monthly basis. The Department must credit the proceeds of the surcharge collected
17 under this section to the Voter-Owned Election Fund created pursuant to
18 G.S. 163-278.97.

19 **"§ 105-113.121. Charges subject to surcharge.**

20 The surcharge imposed by this Article applies to the following regulatory charges:

- 21 (1) Insurance regulatory charges and license fees as provided in
22 G.S. 58-6-25 and G.S. 58-33-125(a).
- 23 (2) Elevator and boiler inspection fees as provided in G.S. 95-110.5 and
24 G.S. 95-69.11.
- 25 (3) Business filing fees with the Secretary of State as provided in
26 G.S. 55-1-22, G.S. 57C-1-22, and G.S. 25-9-525.
- 27 (4) Security dealers and salespersons registration fees as provided in
28 G.S. 78A-37(b)."

29 **SECTION 5.** 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 6.** 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 2005-2006
34 fiscal year and the sum of fifty thousand dollars (\$50,000) for the 2006-2007 fiscal year
35 for the administration of this act.

36 **SECTION 7.** 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 July 1, 2005, and applies to fees and
40 other charges due on or after that date. Section 6 of this act becomes effective July 1,
41 2005. The remainder of this act is effective when it becomes law.