

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 1517

Short Title: Voter-Owned Elections Pilot. (Public)

Sponsors: Representatives Glazier, Ross, Rapp, Martin (Primary Sponsors); Alexander, Bryant, Carney, Coates, Coleman, Cotham, Cunningham, Dickson, England, Faison, Fisher, Goforth, Goodwin, J. Harrell, Harrison, Justice, Lucas, Luebke, McLawhorn, Underhill, Walker, E. Warren, Weiss, Wilkins, Womble, and Wray.

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

April 17, 2007

A BILL TO BE ENTITLED

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

9 The General Assembly of North Carolina enacts:

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

12 "Article 22J.

13 "The Voter-Owned Elections Act.

14 **"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

15 The purpose of this Article is to ensure the vitality and fairness of democratic
16 elections in North Carolina to the end that any eligible citizen of this State can
17 realistically choose to seek and run for public office. It is also the purpose of this Article
18 to protect the constitutional rights of voters and candidates from the detrimental effects
19 of increasingly large amounts of money being raised and spent in North Carolina to
20 influence the outcome of elections. It is essential to the public interest that the potential
21 for corruption or the appearance of corruption is minimized and that the equal and
22 meaningful participation of all citizens in the democratic process is ensured.
23 Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as
24 an alternative source of campaign financing for candidates who obtain a sufficient

1 number of qualifying contributions from registered voters and who voluntarily accept
2 strict fund-raising and spending limits. This Article is available to candidates for the
3 Council of State offices of Auditor, Superintendent of Public Instruction, and
4 Commissioner of Insurance in elections to be held in 2008 and thereafter.

5 **"§ 163-278.96. Definitions.**

6 The following definitions apply in this Article:

- 7 (1) Board. – The State Board of Elections.
8 (2) Campaign-related expenditure. – An expenditure that benefits the
9 candidate's current campaign in accordance with guidelines established
10 by the Board.
11 (3) Candidate. – An individual who becomes a candidate as described in
12 G.S. 163-278.6(4). The term includes a 'candidate campaign
13 committee' as defined in G.S. 163-278.38Z(3).
14 (4) Certified candidate. – A candidate for office who chooses to receive
15 campaign funds from the Fund and who is certified under
16 G.S. 163-278.98(c).
17 (5) Contested primary and contested general election. – An election in
18 which there are more candidates than the number to be elected.
19 (6) Contribution. – Defined in G.S. 163-278.6. A distribution from the
20 Fund pursuant to this Article is not a 'contribution' and is not subject to
21 the limitations of G.S. 163-278.13 or the prohibitions of
22 G.S. 163-278.15 or G.S. 163-278.19.
23 (7) Expenditure. – Defined in G.S. 163-278.6.
24 (8) Fund. – The North Carolina Voter-Owned Elections Fund established
25 in G.S. 163-278.97.
26 (9) Independent expenditure. – Defined in G.S. 163-278.6.
27 (10) Maximum qualifying contributions. – If the candidate has an
28 uncontested primary, an amount equal to 100 times the filing fee for
29 the office sought. If the candidate has a contested primary, 200 times
30 the filing fee for the office sought.
31 (11) Nonparticipating candidate. – A candidate for office who is not
32 seeking to be certified under G.S. 163-278.98(c).
33 (12) Office. – The Council of State offices of Auditor, Superintendent of
34 Public Instruction, and Commissioner of Insurance.
35 (13) Participating candidate. – A candidate for office who has filed a
36 declaration of intent to participate under G.S. 163-278.98(a).
37 (14) Political committee. – Defined in G.S. 163-278.6.
38 (15) Qualifying contribution. – A contribution of not less than ten dollars
39 (\$10.00) and not more than two hundred dollars (\$200.00) in the form
40 of a check or money order to the candidate that meets both of the
41 following conditions:
42 a. Made by any registered voter in this State.
43 b. Made only during the qualifying period and obtained with the
44 approval of the candidate or candidate's committee.

1 (16) Qualifying period. – The period beginning September 1 in the year
2 before the election and ending on the day of the primary.

3 (17) Trigger for rescue funds. – The dollar amount at which rescue funds
4 are released for certified candidates. In the case of a contested primary,
5 the trigger equals the maximum qualifying contributions for the
6 candidate. In the case of a contested general election, the trigger equals
7 the base level of funding available under G.S. 163-278.99(b)(2).

8 **"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.**

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

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

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

19 (2) Money ordered returned to the Fund in accordance with
20 G.S. 163-278.103.

21 (3) Money paid to the Fund equal to excess contributions as provided in
22 G.S. 163-278.98(e)(1).

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

24 (4) Appropriations from the General Fund.

25 (c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and
26 every four years thereafter, the Board, in conjunction with the Advisory Council
27 established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative
28 Commission on Governmental Operations of the General Assembly a report
29 documenting, evaluating, and making recommendations relating to the administration,
30 implementation, and enforcement of the Voter-Owned Elections Act. In its report, the
31 Board shall set out the funds received to date and the expected needs of the Fund during
32 the next election cycle and make recommendations about the feasibility of expanding
33 its provisions to include other candidates for State office based on the experience of the
34 Voter-Owned Elections Act and the experience of similar programs in North Carolina
35 and other states. The Board shall also evaluate and make recommendations regarding
36 how to address activities that could undermine the purpose of this Article, including
37 spending that appears to target candidates but is not reached by regulation.

38 **"§ 163-278.98. 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 750
7 registered voters in this State. The qualifying contributions shall be equal to at least 25
8 times the amount of the filing fee for the office. No payment, gift, or anything of value
9 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 a report itemizing the appropriate number of qualifying
15 contributions received from registered voters, which the Board shall
16 verify through a random sample or other means it adopts. The report
17 shall include the county of residence of each registered voter listed.

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, in accordance with
27 procedures developed by the Board. Within seven business days after submittal of the
28 final report, the Board shall determine, through a random audit or other means it adopts,
29 whether the contributions abide by the definition of qualifying contributions, whether
30 they must be returned to the donor, and whether they exceed the maximum amount of
31 qualifying contributions.

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

35 (1) Beginning August 1 of the year before the election and before filing a
36 declaration of intent, a candidate shall limit campaign-related
37 expenditures to twenty thousand dollars (\$20,000) and shall not accept
38 more than twenty thousand dollars (\$20,000) from sources and in
39 amounts permitted by Article 22A of this Chapter. A candidate who
40 exceeds either of these limits shall be ineligible to file a declaration of
41 intent or receive funds from the Fund. However, the acceptance of
42 contributions in excess of that twenty thousand dollar (\$20,000) limit
43 does not render the candidate ineligible if the candidate pays to the
44 Board an amount equal to the contributions accepted by the candidate

1 in excess of that limit. The Board shall deposit all such payments into
2 the Fund.

3 (2) From the filing of a declaration of intent through the end of the
4 qualifying period, a candidate may accept only qualifying
5 contributions, contributions under ten dollars (\$10.00) from North
6 Carolina voters, in-kind party contributions as permitted in subdivision
7 (4) of this subsection, and personal and family contributions permitted
8 under subdivision (4a) of this subsection. The total contributions the
9 candidate may accept during this period shall not exceed the maximum
10 qualifying contributions for that candidate. In addition to these
11 contributions, the candidate may only expend during this period the
12 remaining money raised pursuant to subdivision (1) of this subsection
13 and possible rescue funds received pursuant to G.S. 163-278.101. If
14 the candidate has any remaining money that was raised as
15 contributions before August 1 of the year before the election, the
16 candidate may not expend that money after filing the declaration of
17 intent, except for purposes permitted under subdivisions (2), (3), (6),
18 (7), or (8) of G.S. 163-278.16B(a).

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

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

28 (4a) During the qualifying period, the candidate may contribute up to one
29 thousand dollars (\$1,000) of that candidate's own money to the
30 campaign. Debt incurred by the candidate for a campaign expenditure
31 shall count toward that limit. The candidate may accept in
32 contributions one thousand dollars (\$1,000) from each member of that
33 candidate's family consisting of spouse, parent, child, brother, and
34 sister.

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

39 (6) Except as provided in subdivision (1) of this subsection, any
40 contribution received by a participating or certified candidate that falls
41 outside that permitted by this subsection shall be returned to the donor
42 as soon as practicable. Contributions intentionally made, solicited, or
43 accepted in violation of this Article are subject to civil penalties as
44 specified in G.S. 163-278.103. The funds involved shall be forfeited to

1 the Civil Penalty and Forfeiture Fund.

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

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

12 **"§ 163-278.99. Distribution from the Fund.**

13 (a) Timing of Fund Distribution. – The Board shall distribute to a certified
14 candidate revenue from the Fund in an amount determined under subdivision (b)(4) of
15 this section within five business days after the certified candidate's name is approved to
16 appear on the ballot in a contested general election, but no earlier than five business
17 days after the primary.

18 (b) Amount of Fund Distribution. – By August 1, 2011, and no less frequently
19 than every four years thereafter, the Board shall determine the amount of funds, rounded
20 to the nearest one hundred dollars (\$100.00), to be distributed to certified candidates as
21 follows:

22 (1) Uncontested primaries. – No funds shall be distributed.

23 (2) Contested primaries. – No funds shall be distributed except as
24 provided in G.S. 163-278.101.

25 (3) Uncontested general elections. – No funds shall be distributed.

26 (4) For candidates in contested general elections, the later of the
27 following: within seven business days after receiving the candidate's
28 final report of qualifying contributions or within two business days
29 after the certification pursuant to G.S. 163-122, 163-123, or 163-98 of
30 the first opposition candidate.

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

38 (1) Contested primary elections. – No funds shall be distributed except as
39 provided in G.S. 163-278.101.

40 (2) Contested general elections. – The base level of funds is the average
41 amount of campaign-related expenditures made by all candidates who
42 won the immediately preceding three general elections for that office,
43 but not less than three hundred thousand dollars (\$300,000).

44 (c) Method of Fund Distribution. – The Board, in consultation with the State

1 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying
2 funds to certified candidates. In all cases, the Board shall distribute funds to certified
3 candidates in a manner that is expeditious, ensures accountability, and safeguards the
4 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified
5 candidates, then the available money shall be distributed proportionally, according to
6 each candidate's eligible funding, and the candidate may raise additional money in the
7 same manner as a nonparticipating candidate for the same office up to the unfunded
8 amount of the candidate's eligible funding.

9 **"§ 163-278.100. Reporting requirements.**

10 (a) Reporting by Noncertified Candidates and Other Entities. – Any
11 nonparticipating candidate with a certified opponent shall report total income, expenses,
12 and obligations to the Board by facsimile machine or electronically within 24 hours
13 after the total amount of campaign-related expenditures or obligations made, or funds
14 raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as
15 defined in G.S. 163-278.96(17). Any entity making independent expenditures in support
16 of or opposition to a certified candidate, or in support of a candidate opposing a certified
17 candidate, or paying for electioneering communications, as defined in G.S. 163-278.80
18 or G.S. 163-278.90, or candidate-specific communications, as defined in
19 G.S. 163-278.100 or G.S. 163-278.110, referring to one of those candidates, shall report
20 the total funds received, spent, or obligated for those expenditures or payments to the
21 Board by facsimile machine or electronically within 24 hours after the total amount of
22 expenditures or obligations made, or funds raised or borrowed, for the purpose of
23 making the independent expenditures, electioneering communications, or
24 candidate-specific communications exceeds five thousand dollars (\$5,000). After this
25 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with
26 an expedited reporting schedule by filing additional reports after receiving an additional
27 amount in excess of one thousand dollars (\$1,000) or after making or obligating to make
28 an additional expenditure or payment in excess of one thousand dollars (\$1,000). The
29 schedule and forms for reports required by this subsection shall be made according to
30 procedures developed by the Board.

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

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

42 **"§ 163-278.101. Rescue funds.**

43 (a) When Rescue Funds Become Available. – When any report or group of
44 reports shows that 'funds in opposition to a certified candidate or in support of an

1 opponent to that candidate' as described in this section exceed the trigger for rescue
2 funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that
3 certified candidate an additional amount equal to the reported excess within the limits
4 set forth in this section. 'Funds in opposition to a certified candidate or in support of an
5 opponent to that candidate' shall be equal to the sum of subdivisions (1) and (2) as
6 follows:

7 (1) The greater of the following:

8 a. Campaign expenditures or obligations made, or funds raised or
9 borrowed, whichever is greater, reported by any one
10 nonparticipating opponent of a certified candidate. Where a
11 certified candidate has more than one nonparticipating
12 opponent, the measure shall be taken from the nonparticipating
13 candidate showing the highest relevant dollar amount.

14 b. The funds distributed in accordance with G.S. 163-278.99(b) to
15 a certified opponent of the certified candidate.

16 (2) The aggregate total of all expenditures and payments reported in
17 accordance with G.S. 163-278.100(a) of entities making independent
18 expenditures, electioneering communications, or candidate-specific
19 communications in opposition to the certified candidate, in support of
20 any opponent of that certified candidate, or referring to either
21 candidate.

22 (b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a
23 certified candidate in a contested primary shall be limited to an amount equal to the
24 maximum qualifying contributions for a candidate with a contested primary.

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

28 (d) Determinations by Board. – In the case of electioneering communications and
29 candidate-specific communications, the Board shall determine which candidate is
30 entitled to receive rescue funds as a result of the communication. The Board shall notify
31 each candidate it determines is entitled to receive rescue funds based on those
32 communications, the sponsor of those communications, and any candidate who is an
33 opponent of the candidate it determines is entitled to the rescue funds. The Board shall
34 give the sponsor of the communication and any opposing candidate an adequate
35 opportunity to rebut the determination of the Board. In considering the rebuttal, all
36 candidates in the race and the sponsor shall be given adequate and equal opportunity to
37 be heard. The Board shall adopt procedures for implementing this subsection, balancing
38 in those procedures adequacy of opportunity to rebut and adequacy and equality of
39 opportunity to be heard on the rebuttal with the need to expedite the decision on
40 awarding rescue funds.

41 **"§ 163-278.102. Unaffiliated and new-party candidates.**

42 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates
43 certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the
44 same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated

1 candidates and new-party candidates not certified to appear on the ballot by noon on the
2 date set in G.S. 163-106(c) deadline for candidate filing in the election year, the
3 deadline for seeking certification to receive revenue from the Fund is noon on the first
4 business day of July of the election year.

5 **"§ 163-278.103. Enforcement by the Board; civil penalty.**

6 In addition to any other penalties that may be applicable, any individual, political
7 committee, or other entity that violates any provision of this Article is subject to a civil
8 penalty of up to ten thousand dollars (\$10,000) per violation or three times the amount
9 of any financial transactions involved in the violation, whichever is greater. In addition
10 to any fine, for good cause shown, a candidate found in violation of this Article may be
11 required to return to the Fund all amounts distributed to the candidate from the Fund. If
12 the Board makes a determination that a violation of this Article has occurred, the Board
13 shall calculate and assess the amount of the civil penalty and shall notify the entity that
14 is assessed the civil penalty of the amount that has been assessed. The Board shall then
15 proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a
16 candidate is in violation of this Article, the Board may consider as a mitigating factor
17 any circumstances out of the candidate's control."

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

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

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

25 "(e3) In order to make meaningful the provisions of the North Carolina
26 Voter-Owned Elections Act, as set forth in Article 22J of this Chapter, no candidate for
27 an office subject to that Article shall accept, and no contributor shall make to that
28 candidate, a contribution during the period beginning 21 days before the day of the
29 general election and ending the day after the general election if that contribution causes
30 the candidate to exceed the 'trigger for rescue funds' defined in G.S. 163-278.62(18). As
31 used in this subsection, the term 'candidate' also includes 'candidate campaign
32 committee' as defined in G.S. 163-278.38Z(3). Nothing in this subsection shall prohibit
33 a candidate from making a contribution or loan secured entirely by that candidate's
34 assets to that candidate's own campaign or to a political committee the principal purpose
35 of which is to support that candidate's campaign. This subsection applies with respect to
36 a candidate only if both of the following statements are true regarding that candidate:

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

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

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

44 **SECTION 4.** The provisions of this act are severable. If any provision of

1 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
2 other provisions of the act that can be given effect without the invalid provision.

3 **SECTION 5.** There is appropriated from the General Fund to the State
4 Board of Elections the sum of two million two hundred ninety thousand dollars
5 (\$2,290,000) for the 2007-2008 fiscal year and the sum of two million two hundred
6 ninety thousand dollars (\$2,290,000) for the 2008-2009 fiscal year for the
7 implementation of this act.

8 **SECTION 6.** This act applies to elections for Auditor, Superintendent of
9 Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of
10 this act becomes effective July 1, 2007. The State Board of Elections shall make the
11 kind of report required in G.S. 163-278.97(c), as enacted in this act, as soon as feasible
12 before the 2008 election. The State Board of Elections shall make the determination
13 required in G.S. 163-278.99(b), as enacted in this act, as soon as feasible before the
14 2008 election. The remainder of this act is effective when it becomes law.