

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35237-RRx-17 (02/20)

Short Title: Voter-Owned Elections.

(Public)

Sponsors: Senators Nesbitt, and Hartsell.

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; AND TO IMPOSE REGULATORY SURCHARGES TO FINANCE THE FUND.

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 22G.

"The Voter-Owned Elections Act.

"§ 163-278.95. 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

1 Labor, and Commissioner of Insurance in elections to be held in 2012 and thereafter.

2 **"§ 163-278.96. Definitions.**

3 The following definitions apply in this Article:

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

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

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

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

14 **"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.**

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

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

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

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

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

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

36 **"§ 163-278.98. Requirements for participation.**

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

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

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

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

12 (1) Signed and filed a completed declaration of intent to participate in this
13 Article.

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

17 (3) Filed a notice of candidacy with the Board as a candidate for the
18 office.

19 (4) Otherwise met the requirements for participation in this Article.

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

23 (d) Final Report for Qualifying Contributions. – No later than five business days
24 after the end of the qualifying period, all participating candidates shall submit a report
25 to the Board of all previously unreported qualifying contributions, together with copies
26 of the contribution forms described in G.S. 163-278.96(15), 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 January 1 of the year before the election and before filing a
36 declaration of intent, a candidate shall limit campaign-related
37 expenditures to ten thousand dollars (\$10,000) and shall not accept
38 more than ten thousand dollars (\$10,000) from sources and in amounts
39 permitted by Article 22A of this Chapter. A candidate who exceeds
40 either of these limits shall be ineligible to file a declaration of intent or
41 receive funds from the Fund.

42 (2) From the filing of a declaration of intent through the end of the
43 qualifying period, a candidate may accept only qualifying
44 contributions, contributions under ten dollars (\$10.00) from North

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

9 (3) After the qualifying period and through the date of the general
10 election, the candidate shall expend only the funds the candidate
11 receives from the Fund pursuant to G.S. 163-278.99(b)(2) plus any
12 funds remaining from the qualifying period, in-kind contributions
13 permitted by subdivision (4) of this subsection, and possible rescue
14 funds.

15 (4) A candidate may accept in-kind contributions from political party
16 executive committees and their affiliates, up to an aggregate value of
17 thirty thousand dollars (\$30,000) for the election 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, as long as the candidate accepts no more than two thousand
25 dollars (\$2,000) from all those family members combined.

26 (5) A candidate and the candidate's committee shall limit the use of all
27 revenues permitted by this subsection to expenditures for
28 campaign-related purposes only. The Board shall publish guidelines
29 outlining permissible campaign-related expenditures. In establishing
30 those guidelines, the Board shall differentiate expenditures that
31 reasonably further a candidate's campaign from expenditures for
32 personal use that would be incurred in the absence of the candidacy. In
33 establishing the guidelines, the Board shall review relevant provisions
34 of G.S. 163-278.16B, G.S. 163-278.42(e), the Federal Election
35 Campaign Act, and rules adopted pursuant to it, and similar provisions
36 in other states.

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

43 (7) A candidate shall return to the Fund any amount distributed for an
44 election that is unspent and uncommitted at the date of the election or

1 at the time the individual ceases to be a certified candidate, whichever
2 occurs first. For accounting purposes, all qualifying, personal, and
3 family contributions shall be considered spent before revenue from the
4 Fund is spent or committed.

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

9 **"§ 163-278.99. Distribution from the Fund.**

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

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

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

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

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

35 (2) Contested general elections. – The base level of funds is the median
36 amount of campaign-related expenditures made by all major party
37 candidates who reported campaign expenditures for contested general
38 election races for the immediately preceding two general elections for
39 that office, but not less than three hundred thousand dollars
40 (\$300,000).

41 (c) Method of Fund Distribution. – The Board, in consultation with the State
42 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying
43 funds to certified candidates. In all cases, the Board shall distribute funds to certified
44 candidates in a manner that is expeditious, ensures accountability, and safeguards the

1 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified
2 candidates, then the available money shall be distributed proportionally, according to
3 each candidate's eligible funding, and the candidate may raise additional money in the
4 same manner as a nonparticipating candidate for the same office up to the unfunded
5 amount of the candidate's eligible funding.

6 **"§ 163-278.100. Reporting requirements.**

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

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

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

39 **"§ 163-278.101. Rescue funds.**

40 (a) When Rescue Funds Become Available. – When any report or group of
41 reports shows that 'funds in opposition to a certified candidate or in support of an
42 opponent to that candidate' as described in this section, exceed the trigger for rescue
43 funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that
44 certified candidate an additional amount equal to the reported excess within the limits

1 set forth in this section. Funds in opposition to a certified candidate or in support of an
2 opponent to that candidate' shall be equal to the sum of subdivisions (1) and (2) as
3 follows:

4 (1) The greater of the following:

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

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

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

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

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

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

38 **"§ 163-278.102. Unaffiliated and new-party candidates.**

39 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates
40 certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the
41 same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated
42 candidates and new-party candidates not certified to appear on the ballot by noon on the
43 date set in G.S. 163-106(c) deadline for candidate filing in the election year, the
44 deadline for seeking certification to receive revenue from the Fund is noon on the first

1 business day of July of the election year.

2 **"§ 163-278.103. Enforcement by the Board; civil penalty.**

3 The Board, with the advice of the Advisory Council established under
4 G.S. 163-278.68(b), shall administer the provisions of this Article in the same manner
5 as described in Article 22D of this Chapter. In addition to any other penalties that may
6 be applicable, any individual, political committee, or other entity that violates any
7 provision of this Article is subject to a civil penalty in the same manner as described in
8 Article 22D of this Chapter."

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

10 "(e) Except as provided in subsections ~~(e2) and (e3)~~-(e2), (e3), and (e5) of this
11 section, this section shall not apply to any national, State, district or county executive
12 committee of any political party. For the purposes of this section only, the term
13 "political party" means only those political parties officially recognized under
14 G.S. 163-96."

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

17 "(e5) In order to make meaningful the provisions of Article 22G of this Chapter, no
18 candidate for any office that is in that current election subject to the provisions of
19 Article 22G of this Chapter shall accept a contribution during the period beginning 21
20 days before the day of the general election and ending the day after the general election.
21 No contributor shall make a contribution to a candidate for any office that is in that
22 current election subject to the provisions of Article 22G of this Chapter during the
23 period beginning 21 days before the general election and ending the day after the
24 general election if that contribution causes the candidate to exceed the 'trigger for rescue
25 funds' defined in G.S. 163-278.96(17). The prohibitions in this subsection shall also
26 apply to a political committee the principal purpose of which is to support a candidate
27 for those offices. Nothing in this subsection shall prohibit a candidate from making a
28 contribution or loan secured entirely by that candidate's assets to that candidate's own
29 campaign or to a political committee the principal purpose of which is to support that
30 candidate's campaign. This subsection applies with respect to a candidate only if both of
31 the following statements are true regarding that candidate:

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

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

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

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

41 "Article 2E.

42 "Regulatory Surcharges.

43 **"§ 105-113.120. Surcharge imposed.**

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

4 (b) Collection and Use. – The agency that collects a charge upon which the
5 surcharge imposed by this section is due must collect the surcharge due under this
6 section at the same time. The head of each agency that collects a surcharge under this
7 section must remit the proceeds of the surcharge to the Department of Revenue on a
8 monthly basis. The Department must credit the proceeds of the surcharge collected
9 under this section to the Voter-Owned Election Fund created pursuant to
10 G.S. 163-278.97.

11 **"§ 105-113.121. Charges subject to surcharge.**

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

- 13 (1) Insurance regulatory charges and license fees as provided in
14 G.S. 58-6-25 and G.S. 58-33-125(a).
15 (2) Elevator and boiler inspection fees as provided in G.S. 95-110.5 and
16 G.S. 95-69.11.
17 (3) Business filing fees with the Secretary of State as provided in
18 G.S. 55-1-22, 57C-1-22, and 25-9-525.
19 (4) Security dealers and salespersons registration fees as provided in
20 G.S. 78A-37(b)."

21 **SECTION 5.** The provisions of this act are severable. If any provision of
22 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
23 other provisions of the act that can be given effect without the invalid provision.

24 **SECTION 6.** This act applies to elections for Secretary of State, Auditor,
25 Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of
26 Agriculture, Commissioner of Labor, and Commissioner of Insurance in 2012 and
27 thereafter. Section 4 of this act becomes effective July 1, 2008, and applies to fees and
28 other charges due on or after that date. The remainder of this act is effective when it
29 becomes law.