

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1042

Short Title: Voter-Owned Elections. (Public)

Sponsors: Senators Clodfelter; Albertson, Atwater, Berger of Franklin, Bingham, Boseman, Cowell, Garrou, Graham, Hagan, Hartsell, Jenkins, Kinnaird, Lucas, Malone, Nesbitt, Purcell, Rand, Shaw, Snow, and Swindell.

Referred to: Judiciary I.

March 24, 2005

A BILL TO BE ENTITLED

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

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:

"Article 22G.

"The Voter-Owned Elections Act.

11 **§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

12 The purpose of this Article is to ensure the vitality and fairness of democratic
13 elections in North Carolina, to the end that any eligible citizen of this State can
14 realistically choose to seek and run for public office. It is also the purpose of this Article
15 to protect the constitutional rights of voters and candidates from the detrimental effects
16 of increasingly large amounts of money being raised and spent in North Carolina to
17 influence the outcome of elections. It is essential to the public interest that the potential
18 for corruption or the appearance of corruption is minimized and that the equal and
19 meaningful participation of all citizens in the democratic process is ensured.
20 Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as
21 an alternative source of campaign financing for candidates who obtain a sufficient
22 number of qualifying contributions from registered voters and who voluntarily accept
23 strict fund-raising and spending limits. This Article is available to candidates for the
24 Council of State offices of Secretary of State, Auditor, Treasurer, Superintendent of
25 Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of
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1 Labor, and Commissioner of Insurance in elections to be held in 2008 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 political committee authorized
10 by the candidate for that candidate's election.
- 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 April 1, 2007, 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) Filed a completed declaration of intent to participate in this Article.

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

17 (3) Filed a notice of candidacy with the State Board of Elections as a
18 candidate for the 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 shall accept only qualifying
44 contributions and shall expend up to an amount equal to the maximum

1 qualifying contributions for that candidate and, in addition, may
2 expend possible rescue funds and money raised pursuant to
3 subdivision (1) of this subsection. Contributions a candidate may
4 expend up to that limit shall be limited to qualifying contributions,
5 contributions from North Carolina registered voters that are under ten
6 dollars (\$10.00), and personal and family contributions permitted by
7 subdivision (4a) of this subsection.

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

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

17 (4a) During the qualifying period, the candidate may contribute up to one
18 thousand dollars (\$1,000) of that candidate's own money to the
19 campaign. Debt incurred by the candidate for a campaign expenditure
20 shall count toward that limit. The candidate may accept in
21 contributions one thousand dollars (\$1,000) from each member of that
22 candidate's family consisting of spouse, parent, child, brother, and
23 sister.

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

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

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

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

44 **"§ 163-278.99. Distribution from the Fund.**

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

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

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

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

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

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

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

40 **"§ 163-278.100. Reporting requirements.**

41 (a) Reporting by Noncertified Candidates and Independent Expenditure Entities.
42 – Any noncertified candidate with a certified opponent shall report total income,
43 expenses, and obligations to the Board by facsimile machine or electronically within 24
44 hours after the total amount of campaign-related expenditures or obligations made, or

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

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

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

25 **"§ 163-278.101. Rescue funds.**

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

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

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

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

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

4 **"§ 163-278.102. Unaffiliated and new-party candidates.**

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

11 **"§ 163-278.103. Enforcement by the Board; civil penalty.**

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

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 22G of this Chapter, no candidate for
27 any office that is in that current election subject to the provisions of Article 22G of this
28 Chapter shall accept a contribution during the period beginning 21 days before the day
29 of the general election and ending the day after the general election. No contributor
30 shall make a contribution to a candidate for any office that is in that current election
31 subject to the provisions of Article 22G of this Chapter during the period beginning 21
32 days before the general election and ending the day after the general election. The
33 prohibitions in this subsection shall also apply to a political committee the principal
34 purpose of which is to support a candidate for those offices. Nothing in this subsection
35 shall prohibit a candidate from making a contribution or loan secured entirely by that
36 candidate's assets to that candidate's own campaign or to a political committee the
37 principal purpose of which is to support that candidate's campaign. This subsection
38 applies with respect to a candidate only if both of the following statements are true
39 regarding that candidate:

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

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

44 The recipient of a contribution that apparently violates this subsection has three days

1 to return the contribution or file a detailed statement with the State Board of Elections
2 explaining why the contribution does not violate this subsection."

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

5 "Article 2E.

6 "Regulatory Surcharge.

7 **"§ 105-113.120. Surcharge imposed.**

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

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

18 **"§ 105-113.121. Charges subject to surcharge.**

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

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

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

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