

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1563*

Short Title: Voter-Owned Elections. (Public)

Sponsors: Representatives Alexander, Church, Earle, Walker (Primary Sponsors); Adams, B. Allen, L. Allen, Bell, Bordsen, Carney, Coates, Cole, Coleman, Cunningham, England, Farmer-Butterfield, Fisher, Gibson, Glazier, Goforth, Goodwin, Hackney, Harrison, Hill, Hunter, Insko, Jeffus, Jones, Ed Jones, Justice, Lucas, Luebke, Martin, McAllister, McLawhorn, Michaux, Owens, Parmon, Pierce, Rapp, Ross, Saunders, Tolson, Underhill, Wainwright, Warren, Weiss, Wilkins, Womble, Wray, and Yongue.

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

April 27, 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:

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

1 an alternative source of campaign financing for candidates who obtain a sufficient
2 number of qualifying contributions from registered voters and who voluntarily accept
3 strict fund-raising and spending limits. This Article is available to candidates for the
4 Council of State offices of Secretary of State, Auditor, Treasurer, Superintendent of
5 Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of
6 Labor, and Commissioner of Insurance in elections to be held in 2008 and thereafter.

7 **"§ 163-278.96. Definitions.**

8 The following definitions apply in this Article:

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

- 1 b. Made only during the qualifying period and obtained with the
2 approval of the candidate or candidate's committee.
3 c. Acknowledged by a written receipt, on a multicopy form
4 approved by the Board, which identifies the complete name,
5 residence address, and county of residence of the contributor
6 and the amount and date of the contribution made; states that
7 the contributor is a registered voter; states that the contributor
8 authorizes the candidate to use the contribution to qualify to
9 receive funds from the Fund; and is signed by the candidate or
10 the candidate's representative.

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

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

19 **"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.**

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

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

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

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

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

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

41 **"§ 163-278.98. Requirements for participation.**

42 (a) Declaration of Intent to Participate. – Any individual choosing to receive
43 campaign funds from the Fund shall first file with the Board a declaration of intent to
44 participate in the act as a candidate for a stated office. The declaration of intent shall be

1 filed before or during the qualifying period and before collecting any qualifying
2 contributions. In the declaration, the candidate shall swear or affirm that only one
3 political committee, identified with its treasurer, shall handle all contributions,
4 campaign-related expenditures, and obligations for the participating candidate and that
5 the candidate will comply with the contribution and expenditure limits set forth in
6 subsection (e) of this section and all other requirements set forth in this Article or
7 adopted by the Board. Failure to comply is a violation of this Article.

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

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

- 17 (1) Filed a completed declaration of intent to participate in this Article.
- 18 (2) Submitted copies of the appropriate number of forms described in
19 G.S. 163-278.96(15) signed by contributors who are registered voters,
20 which the Board shall verify through a random sample or other means
21 it adopts.
- 22 (3) Filed a notice of candidacy with the State Board of Elections as a
23 candidate for the office.
- 24 (4) Otherwise met the requirements for participation in this Article.

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

28 (d) Final Report for Qualifying Contributions. – No later than five business days
29 after the end of the qualifying period, all participating candidates shall submit a report
30 to the Board of all previously unreported qualifying contributions, together with copies
31 of the contribution forms described in G.S. 163-278.96(15), in accordance with
32 procedures developed by the Board. Within seven business days after submittal of the
33 final report, the Board shall determine, through a random audit or other means it adopts,
34 whether the contributions abide by the definition of qualifying contributions, whether
35 they must be returned to the donor, and whether they exceed the maximum amount of
36 qualifying contributions.

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

- 40 (1) Beginning January 1 of the year before the election and before filing a
41 declaration of intent, a candidate shall limit campaign-related
42 expenditures to ten thousand dollars (\$10,000) and shall not accept
43 more than ten thousand dollars (\$10,000) from sources and in amounts
44 permitted by Article 22A of this Chapter. A candidate who exceeds

- 1 either of these limits shall be ineligible to file a declaration of intent or
2 receive funds from the Fund.
- 3 (2) From the filing of a declaration of intent through the end of the
4 qualifying period, a candidate shall accept only qualifying
5 contributions and shall expend up to an amount equal to the maximum
6 qualifying contributions for that candidate and, in addition, may
7 expend possible rescue funds and money raised pursuant to
8 subdivision (1) of this subsection. Contributions a candidate may
9 expend up to that limit shall be limited to qualifying contributions,
10 contributions from North Carolina registered voters that are under ten
11 dollars (\$10.00), and personal and family contributions permitted by
12 subdivision (4a) of this subsection.
- 13 (3) After the qualifying period and through the date of the general
14 election, the candidate shall cease campaign-related fund-raising
15 activities and shall expend only the funds the candidate receives from
16 the Fund pursuant to G.S. 163-278.99(b)(2) plus any funds remaining
17 from the qualifying period and possible rescue funds.
- 18 (4) In addition to the amounts above, a candidate may accept in-kind
19 contributions from political party executive committees, up to an
20 aggregate value of thirty thousand dollars (\$30,000) for the election
21 cycle.
- 22 (4a) During the qualifying period, the candidate may contribute up to one
23 thousand dollars (\$1,000) of that candidate's own money to the
24 campaign. Debt incurred by the candidate for a campaign expenditure
25 shall count toward that limit. The candidate may accept in
26 contributions one thousand dollars (\$1,000) from each member of that
27 candidate's family consisting of spouse, parent, child, brother, and
28 sister.
- 29 (5) A candidate and the candidate's committee shall limit the use of all
30 revenues permitted by this subsection to expenditures for
31 campaign-related purposes only. The Board shall publish guidelines
32 outlining permissible campaign-related expenditures.
- 33 (6) Any contribution received by a participating or certified candidate that
34 falls outside that permitted by this subsection shall be returned to the
35 donor as soon as practicable. Contributions intentionally made,
36 solicited, or accepted in violation of this Article are subject to civil
37 penalties as specified in G.S. 163-278.103. The funds involved shall be
38 forfeited to the Civil Penalty and Forfeiture Fund.
- 39 (7) A candidate shall return to the Fund any amount distributed for an
40 election that is unspent and uncommitted at the date of the election, or
41 at the time the individual ceases to be a certified candidate, whichever
42 occurs first. For accounting purposes, all qualifying, personal, and
43 family contributions shall be considered spent before revenue from the
44 Fund is spent or committed.

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

5 **§ 163-278.99. Distribution from the Fund.**

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

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

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

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

25 (1) Contested primary 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 primary
28 races for the immediately preceding two primaries for that office, but
29 not less than fifty thousand dollars (\$50,000).

30 (2) Contested general 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 general
33 election races for the immediately preceding two general elections for
34 that office, but not less than three hundred thousand dollars
35 (\$300,000).

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

1 **"§ 163-278.100. Reporting requirements.**

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

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

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

30 **"§ 163-278.101. Rescue funds.**

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

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

43 (2) The sum of all expenditures reported in accordance with
44 G.S. 163-278.100(a) of entities making independent expenditures in

1 opposition to the certified candidate or in support of any opponent of
2 that certified candidate.

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

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

9 **"§ 163-278.102. Unaffiliated and new-party candidates.**

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

16 **"§ 163-278.103. Enforcement by the Board; civil penalty.**

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

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

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

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

30 "~~e~~(e3) In order to make meaningful the provisions of the North Carolina
31 Voter-Owned Elections Act, as set forth in Article 22G of this Chapter, no candidate for
32 any office that is in that current election subject to the provisions of Article 22G of this
33 Chapter shall accept a contribution during the period beginning 21 days before the day
34 of the general election and ending the day after the general election. No contributor
35 shall make a contribution to a candidate for any office that is in that current election
36 subject to the provisions of Article 22G of this Chapter during the period beginning 21
37 days before the general election and ending the day after the general election. The
38 prohibitions in this subsection shall also apply to a political committee the principal
39 purpose of which is to support a candidate for those offices. Nothing in this subsection
40 shall prohibit a candidate from making a contribution or loan secured entirely by that
41 candidate's assets to that candidate's own campaign or to a political committee the
42 principal purpose of which is to support that candidate's campaign. This subsection
43 applies with respect to a candidate only if both of the following statements are true
44 regarding that candidate:

- 1 2005. The remainder of this act is effective when it becomes law.