

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1949

Short Title: Legislative Campaigns Pilot. (Public)

Sponsors: Representatives J. Harrell, Coleman, Justice, Walker (Primary Sponsors); Alexander, Bell, Carney, Coates, England, Farmer-Butterfield, Fisher, Glazier, Goforth, Goodwin, Harrison, Hill, Insko, Lucas, Luebke, Martin, Rapp, Ross, Tarleton, Tolson, Underhill, Wainwright, R. Warren, Weiss, Wilkins, Womble, and Wright.

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

May 8, 2007

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

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 22I.

12 "The North Carolina Legislative Campaigns Pilot Program.

13 **"§ 163-278.95. Purpose and establishment of North Carolina Legislative**
14 **Campaigns Pilot Program.**

15 This Article establishes the North Carolina Legislative Campaigns Pilot Program as
16 an alternative source of campaign financing for candidates who demonstrate public
17 support and voluntarily accept strict fund-raising and spending limits. The purpose of
18 this Article is to develop methods to promote fairness of democratic elections and to
19 protect the rights of voters and candidates from the detrimental effects of large amounts
20 of money being raised and spent to influence the outcome of elections.

21 **"§ 163-278.96. Definitions.**

22 The following definitions apply in this Article:

23 (1) Advisory Council. – The Advisory Council established in
24 G.S. 163-278.68.

- 1 (2) Board. – The State Board of Elections.
- 2 (3) Campaign-related expenditure. – An expenditure that benefits the
3 candidate's current campaign in accordance with guidelines established
4 by the Board.
- 5 (4) Candidate. – An individual who becomes a candidate as described in
6 G.S. 163-278.6(4). The term includes a candidate campaign committee
7 as defined by G.S. 163-278.38Z(3).
- 8 (5) Certified candidate. – A candidate for office who chooses to receive
9 campaign funds from the Fund and who is certified under
10 G.S. 163-278.98(c).
- 11 (6) Contested primary and contested general election. – An election in
12 which there are more candidates than the number to be elected.
- 13 (7) Contribution. – Defined in G.S. 163-278.6. A distribution from the
14 Fund pursuant to this Article is not a 'contribution' and is not subject to
15 the limitations of G.S. 163-278.13 or the prohibitions of
16 G.S. 163-278.15 or G.S. 163-278.19.
- 17 (8) Expenditure. – Defined in G.S. 163-278.6.
- 18 (9) Fund. – The North Carolina Legislative Campaigns Pilot Fund
19 established in G.S. 163-278.97.
- 20 (10) Independent expenditure. – Defined in G.S. 163-278.6.
- 21 (11) Nonparticipating candidate. – A candidate for office who is not
22 seeking to be certified under G.S. 163-278.98(c).
- 23 (12) Office. – The House of Representatives seats designated by law.
- 24 (13) Participating candidate. – A candidate for office who has filed a
25 declaration of intent to participate under G.S. 163-278.98(a).
- 26 (14) Political committee. – Defined in G.S. 163-278.6.
- 27 (15) Qualifying contribution. – A contribution of not less than ten dollars
28 (\$10.00) and not more than one hundred dollars (\$100.00) in the form
29 of a check or money order to the candidate or the candidate's
30 committee that meets both of the following conditions:
- 31 a. Made by any registered voter who resides in the district in
32 which the candidate seeks office.
- 33 b. Made only during the qualifying period and obtained with the
34 approval of the candidate.
- 35 (16) Qualifying period. – The period beginning October 1 of the year
36 before the election and ending on the day of the primary.
- 37 (17) Trigger for rescue funds. – The dollar amount at which rescue funds
38 are released for certified candidates. In the case of a primary, the
39 trigger equals the maximum amount a participating candidate is
40 permitted by G.S. 163-278.98(b) to raise in qualifying contributions.
41 In the case of a general election, the trigger equals the funding
42 available under G.S. 163-278.99(b)(4).

43 **"§ 163-278.97. Legislative Campaigns Pilot Fund established; sources of funding.**

- 44 (a) Establishment of Fund. – The North Carolina Legislative Campaigns Pilot

1 Fund is established to finance the election campaigns of certified candidates for office
2 and to pay administrative and enforcement costs of the Board related to this Article. The
3 Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by
4 the Fund is credited to the Fund. The Board shall administer the Fund.

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

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

10 (2) Voluntary donations made directly to the Fund. Corporations, other
11 business entities, labor unions, and professional associations may
12 make donations to the Fund.

13 (3) Appropriations by the General Assembly.

14 (c) Determination of Fund Amount. – By September 1, 2007, and by April 1
15 every two years thereafter, the Board, in conjunction with the Advisory Council, shall
16 prepare and provide to the Joint Legislative Commission on Governmental Operations
17 of the General Assembly a report documenting, evaluating, and making
18 recommendations relating to the administration, implementation, and enforcement of
19 this Article. In its report, the Board shall set out the funds received to date and the
20 expected needs of the Fund during the next election cycle.

21 **"§ 163-278.98. Requirements for participation.**

22 (a) Declaration of Intent to Participate. – Any individual choosing to receive
23 campaign funds from the Fund shall first file with the Board a declaration of intent to
24 participate in the program as a candidate for a stated office. The declaration of intent
25 shall be filed before or during the qualifying period and before collecting any qualifying
26 contributions. In the declaration, the candidate shall swear or affirm that only one
27 political committee, identified with its treasurer, shall handle all contributions,
28 campaign-related expenditures, and obligations for the participating candidate and that
29 the candidate will comply with the contribution and expenditure limits set forth in
30 subsection (e) of this section and all other requirements set forth in this Article or
31 adopted by the Board. Failure to comply is a violation of this Article.

32 (b) Demonstration of Support of Candidacy. – Participating candidates who seek
33 certification to receive campaign funds from the Fund shall first, during the qualifying
34 period, obtain qualifying contributions from at least 150 registered voters in an
35 aggregate sum that at least equals three thousand dollars (\$3,000) but that does not
36 exceed twenty-five thousand dollars (\$25,000). No payment, gift, or anything of value
37 shall be given in exchange for a qualifying contribution.

38 (c) Certification of Candidates. – Upon receipt of a submittal of the record of
39 demonstrated support by a participating candidate, the Board shall determine whether or
40 not the candidate has complied with all the following requirements:

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

42 (2) Submitted a report itemizing the appropriate number of qualifying
43 contributions received from registered voters, which the Board shall

1 verify through a random sample or other means it adopts. The report
2 shall include the county of residence of each registered voter listed.

3 (3) Filed a valid notice of candidacy pursuant to this Chapter.

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

5 The Board shall certify candidates complying with the requirements of this section
6 as soon as possible and no later than five business days after receipt of a satisfactory
7 record of demonstrated support.

8 (d) Restrictions on Contributions and Expenditures for Participating and Certified
9 Candidates. – The following restrictions shall apply to contributions and expenditures
10 with respect to participating and certified candidates:

11 (1) Beginning January 1 of the year before the election and before the
12 filing of a declaration of intent, a candidate for office may accept in
13 contributions up to five thousand dollars (\$5,000) from sources and in
14 amounts permitted by Article 22A of this Chapter and may expend up
15 to five thousand dollars (\$5,000) for any campaign-related
16 expenditure. A candidate who exceeds either of these limits shall be
17 ineligible to file a declaration of intent or receive funds from the Fund.

18 (2) From the filing of a declaration of intent through the end of the
19 qualifying period, a candidate may accept only qualifying
20 contributions, contributions under ten dollars (\$10.00) from voters
21 residing in the candidate's district, and personal and family
22 contributions permitted under subdivision (4) of this subsection. The
23 total contributions the candidate may accept during this period shall
24 not exceed the maximum qualifying contributions for that candidate.
25 In addition to these contributions, the candidate may only expend
26 during this period the remaining money raised pursuant to subdivision
27 (1) of this subsection and possible rescue funds received pursuant to
28 G.S. 163-278.99B.

29 (3) After the qualifying period and through the date of the general
30 election, the candidate shall expend only the funds the candidate
31 receives from the Fund pursuant to G.S. 163-278.99(b)(4) plus any
32 funds remaining from the qualifying period and possible rescue funds.
33 In addition, during that period a candidate may accept in-kind
34 contributions from political party executive committees, up to an
35 aggregate value of ten percent (10%) of the amount the candidate is
36 entitled to receive under G.S. 163-278.99(b)(4).

37 (4) During the qualifying period, the candidate may contribute up to one
38 thousand dollars (\$1,000) of that candidate's own money to the
39 campaign. Debt incurred by the candidate for a campaign expenditure
40 shall count toward that limit. During the qualifying period, the
41 candidate may accept in contributions up to one thousand dollars
42 (\$1,000) from each member of that candidate's family consisting of
43 spouse, parent, child, brother, and sister, as long as the candidate

1 accepts no more than two thousand dollars (\$2,000) from all those
2 family members combined.

3 (5) A candidate and the candidate's committee shall limit the use of all
4 revenues permitted by this subsection to campaign-related
5 expenditures only. The Board shall publish guidelines outlining
6 permissible campaign-related expenditures. In establishing those
7 guidelines, the Board shall differentiate expenditures that reasonably
8 further a candidate's campaign from expenditures for personal use that
9 would be incurred in the absence of the candidacy. In establishing the
10 guidelines, the Board shall review relevant provisions of
11 G.S. 163-278.16B, G.S. 163-278.42(e), the Federal Election Campaign
12 Act, and rules adopted pursuant to it, and similar provisions in other
13 states.

14 (6) Any contribution received by a participating or certified candidate that
15 falls outside that permitted by this subsection shall be returned to the
16 donor as soon as practicable. Contributions intentionally made,
17 solicited, or accepted in violation of this Article are subject to civil
18 penalties as specified in G.S. 163-278.70. The funds involved shall be
19 forfeited to the Civil Penalty and Forfeiture Fund.

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

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

30 **§ 163-278.99. Distribution from the Fund.**

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

36 (b) Amount of Fund Distribution. – By August 1, 2007, and no less frequently
37 than every two years thereafter, the Board shall determine the amount of funds, rounded
38 to the nearest one hundred dollars (\$100.00), to be distributed to certified candidates as
39 follows:

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

41 (2) Contested primaries. – No funds shall be distributed except as
42 provided in G.S. 163-278.99B.

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

44 (4) Contested general elections. – Funds shall be distributed to a certified

1 candidate in the amount of fifty thousand dollars (\$50,000).

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

11 **"§ 163-278.99A. Reporting requirements.**

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

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

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

44 **"§ 163-278.99B. Rescue funds.**

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

9 (1) The greater of the following:

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

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

18 (2) The aggregate total of all expenditures and payments reported in
19 accordance with G.S. 163-278.99A(a) of entities making independent
20 expenditures, electioneering communications, or candidate-specific
21 communications in opposition to the certified candidate, in support of
22 any opponent of that certified candidate, or referring to either
23 candidate.

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

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

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

43 **"§ 163-278.99C. Unaffiliated and new-party candidates.**

44 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates

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

6 **"§ 163-278.99D. Enforcement by the Board; civil penalty.**

7 The Board, with the advice of the Advisory Council, shall administer the provisions
8 of this Article in the same manner as described in Article 22D of this Chapter. In
9 addition to any other penalties that may be applicable, any individual, political
10 committee, or other entity that violates any provision of this Article is subject to a civil
11 penalty in the same manner as described in Article 22D of this Chapter."

12 **SECTION 2.** G.S. 163-278.13 is amended by adding a new subsection to
13 read:

14 "(e4) In order to make meaningful the provisions of the North Carolina Legislative
15 Campaigns Pilot Program, as set forth in Article 22I of this Chapter, no candidate for
16 any office that is in that current election subject to the provisions of Article 22I of this
17 Chapter shall accept, and no contributor shall make to that candidate, a contribution
18 during the period beginning 21 days before the day of the general election and ending
19 the day after the general election if that contribution causes the candidate to exceed the
20 "trigger for rescue funds" defined in G.S. 163-278.96(17). The prohibitions in this
21 subsection shall also apply to a political committee the principal purpose of which is to
22 support a candidate for those offices. Nothing in this subsection shall prohibit a
23 candidate from making a contribution or loan secured entirely by that candidate's assets
24 to that candidate's own campaign or to a political committee the principal purpose of
25 which is to support that candidate's campaign. This subsection applies with respect to a
26 candidate only if both of the following statements are true regarding that candidate:

- 27 (1) That candidate is opposed in the general election by a certified
28 candidate as defined in Article 22I of this Chapter.
29 (2) That certified candidate has not received the maximum rescue funds
30 available under G.S. 163-278.99B(c).

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

34 **SECTION 3.** G.S. 163-278.13(e) reads as rewritten:

35 "(e) Except as provided in subsections ~~(e2) and (e3)~~-(e2), (e3), and (e4) of this
36 section, this section shall not apply to any national, State, district or county executive
37 committee of any political party. For the purposes of this section only, the term
38 "political party" means only those political parties officially recognized under
39 G.S. 163-96."

40 **SECTION 4.** The provisions of this act are severable. If any provision of
41 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
42 other provisions of this act that can be given effect without the invalid provision.

43 **SECTION 5.** There is appropriated from the General Fund to the State
44 Board of Elections for the 2007-2008 fiscal year the sum of seven hundred fifty

1 thousand dollars (\$750,000) and for the 2008-2009 fiscal year the sum of seven hundred
2 fifty thousand dollars (\$750,000) for the purpose of implementing the provisions of this
3 act.

4 **SECTION 6.** This act is effective when it becomes law. Sections 1, 2, and 3
5 of this act apply only to elections in 2008 for the seats representing Districts 25, 39, 45,
6 74, 90, and 114 in the House of Representatives. Section 5 of this act becomes effective
7 July 1, 2007. The remainder of this act is effective when it becomes law.