

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-540
HOUSE BILL 1517

AN ACT TO ESTABLISH A PILOT PROGRAM 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 APPROPRIATE FUNDS TO FINANCE THE PROGRAM.

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 22J.

"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 Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and thereafter.

"§ 163-278.96. Definitions.

The following definitions apply in this Article:

- (1) Board. – The State Board of Elections.
- (2) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.
- (3) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a 'candidate campaign

- committee' as defined in G.S. 163-278.38Z(3).
- (4) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c).
 - (5) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.
 - (6) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a 'contribution' and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S. 163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).
 - (6a) Electioneering communication. – As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.
 - (7) Expenditure. – Defined in G.S. 163-278.6.
 - (8) Fund. – The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.
 - (9) Independent expenditure. – Defined in G.S. 163-278.6.
 - (10) Maximum qualifying contributions. – If the candidate has an uncontested primary, an amount equal to 100 times the filing fee for the office sought. If the candidate has a contested primary, 200 times the filing fee for the office sought.
 - (11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).
 - (12) Office. – The Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance.
 - (13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).
 - (14) Political committee. – Defined in G.S. 163-278.6.
 - (15) Qualifying contribution. – A contribution of not less than ten dollars (\$10.00) and not more than two hundred dollars (\$200.00) in the form of a check or money order to the candidate that meets both of the following conditions:
 - a. Made by any registered voter in this State.
 - b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.
 - (16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary.
 - (17) Trigger for matching funds. – The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In

the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(2).

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

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

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

- (1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.
- (2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.
- (3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).
- (4) Voluntary donations made directly to the Fund.
- (5) Appropriations from the General Fund.

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

"§ 163-278.98. Requirements for participation.

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

this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – In order to be certified, participating candidates must obtain qualifying contributions from at least 750 registered voters in this State. The qualifying contributions shall be equal to at least 25 times the amount of the filing fee for the office. No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

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

- (1) Filed a completed declaration of intent to participate in this Article.
- (2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.
- (3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.
- (4) Otherwise met the requirements for participation in this Article.

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

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

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

- (1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars (\$20,000) and shall not accept more than twenty thousand dollars (\$20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar (\$20,000) limit does not render the candidate ineligible if the candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.
- (2) From the filing of a declaration of intent through the end of the

qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars (\$10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

- (3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.
- (4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars (\$30,000) for the election cycle.
- (4a) During the qualifying period, the candidate may contribute up to one thousand dollars (\$1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars (\$1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.
- (5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.
- (6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.
- (7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or

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

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

"§ 163-278.99. Distribution from the Fund.

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

- (1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.
- (2) The remainder of the amount on August 1 before the general election.

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

- (1) Uncontested primaries. – No funds shall be distributed.
- (2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.99B.
- (3) Uncontested general elections. – No funds shall be distributed.
- (4) Contested general elections. – The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made by all candidates who won the immediately preceding three general elections for that office, but not less than three hundred thousand dollars (\$300,000). For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party.

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

"§ 163-278.99A. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total income, expenses,

and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign-related expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars (\$5,000). After this 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule by filing additional reports after receiving an additional amount in excess of one thousand dollars (\$1,000) or after making or obligating to make an additional expenditure or payment in excess of one thousand dollars (\$1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.

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

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

"§ 163-278.99B. Matching funds.

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

- (1) The greater of the following:
 - a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

- b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.
- (2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

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

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

(d) Determinations by Board. – In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

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

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

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

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars (\$10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition

to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

"§ 163-278.99E. Voter education.

(a) Voter Guide. – The Board shall publish a Voter Guide that explains the functions of office as defined in G.S. 163-278.96(12) and the laws concerning the election of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. – The Voter Guide shall include information concerning all candidates for office as defined in G.S. 163-278.96(12), as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

- (1) Place of residence.
- (2) Education.
- (3) Occupation.
- (4) Employer.
- (5) Previous elective offices held.
- (6) Endorsements, limited to 50 words. Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."
- (7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days

to resubmit the candidate statement if the Board rejects a portion of the statement."

(c) Disclaimer. – The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. – The Board may publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69."

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

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

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

"(e4) In order to make meaningful the provisions of the North Carolina Voter-Owned Elections Act, as set forth in Article 22J of this Chapter, no candidate for an office subject to that Article shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the 'trigger for matching funds' defined in G.S. 163-278.96(17). As used in this subsection, the term 'candidate' also includes 'candidate campaign committee' as defined in G.S. 163-278.38Z(3). Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee, the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

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

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

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

SECTION 5. There is appropriated from the General Fund to the State Board of Elections the sum of one million dollars (\$1,000,000) for the 2007-2008 fiscal year and the sum of three million five hundred eighty thousand dollars (\$3,580,000) for the 2008-2009 fiscal year for the implementation of this act.

SECTION 6. Sections 1 through 3 of this act become effective 30 days after this act is given preclearance under section 5 of the Voting Rights Act of 1965. This act

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

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:05 p.m. this 31st day of August, 2007