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MEMORANDUM

**From:** Kim Westbrook Strach, Deputy Director, Campaign Finance Division  
**Date:** March 14, 2008  
**Re:** Guidelines for Basic Components of a Public Campaign Financing Program

In accordance with State Law 2007-222 (House Bill 483), the State Board of Elections has prepared this memo as guidance for a local government authorized to implement a “public campaign financing program” as defined in North Carolina General Statutes 163-278.6(17a). Many of the details of a program will necessarily be designed to fit the historical experience of the jurisdiction and the office(s) covered by the program. Rather than issue rigid specifications, the State Board provides this memo, in accordance with the law’s instructions, as “guidelines for the basic components needed in a program to meet the criteria set forth in G.S. 163-278.6(17a).”

Two public financing programs adopted by the NC General Assembly contain an instructive set of components that fulfill the criteria in NCGS 163-278.6(17a). These two are (1) the judicial public financing program, in Article 22D, and (2) the Voter-Owned Elections Act for selected Council of State offices, in Article 22J of Chapter 163 of the General Statutes. While the two programs use different numbers and have some different features, they are constructed with the same basic components, which are outlined below.

A local government may use this memo as a checklist of the components and issues addressed by a well-designed public campaign financing program. The list is not exhaustive or inclusive of every option available. Please contact the Campaign Finance Division if you have any questions. The State Board of Elections is ready to assist with technical advice in the process of creating a working program that meets the definition in the law.

Basic Components for a Public Campaign Financing Program

\* A “purpose” statement for establishing the program adheres to the landmark U.S. Supreme Court case *Buckley v. Valeo*, 424 U.S. 1 (1976). The statement should reference a compelling public need to address the “detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections,” specifically, the possibility of corruption or the appearance of corruption. [NCGS 163-278.61; 163-278.95]

- \* The program is voluntary for candidates. [ibid]
- \* The program does not unduly burden the non-participating candidate, but may add new disclosure requirements and other provisions to make the program effective. [e.g., NCGS 163-278.66; 163-278.99A]
- \* The program's requirements "do not discriminate for or against any candidate on the basis of race, creed, position on issues, status of incumbency or non-incumbency, or party affiliation." [NCGS 163-278.6(17a)]
- \* The program provides for a start-up or seed money period when candidates may raise and/or spend a specific threshold of private funds, including personal and family funds, before filing a public notice of intent to participate in the program. [NCGS 163-278.64(d); 163-278.98(e)]
- \* The program requires that all of the candidate's campaign fundraising and expenditures are done through a single committee. [NCGS 163-278.64(a); 163-278.98(a)]
- \* To receive the program's benefits, the participating candidate must voluntarily accept strict fundraising and spending limits. [ibid]
- \* The program also requires that candidates seeking public funds must first demonstrate significant support from the public by obtaining qualifying contributions from voters registered in the jurisdiction. "No payment, gift, or anything of value shall be given in exchange for a qualifying contribution." [NCGS 163-278.64(b); 163-278.98(b)]
- \* The program establishes minimum and maximum amounts for the aggregated qualifying contributions, which set a floor to qualify for public funds and a ceiling to limit the reliance on private funds. [ibid]
- \* The program describes how the qualifying contributions are documented and verified, what happens if excess qualifying contributions are received, and how small contributions under the minimum for qualifying contributions are treated. [NCGS 163-278.64(c) and (d); 163-278.98(c) and (e)]
- \* The program provides a level of funding that, when combined with other provisions for fundraising, provides a significant or competitive amount of funding to candidates. [NCGS 163-278.65; 163-278.99]
- \* The amount of funding is pegged to a variable that changes over time to reflect the impact of inflation and/or changes in spending by candidates for the office. [ibid]
- \* The program provides additional public funds as "rescue" or "matching" funds to offset fundraising or spending by opponents or outside groups that exceeds a certain level, and it requires expedited reporting by those entities as they approach that level. [NCGS 163-278.67; 163-278.99B]

- \* The program describes a “rapid, reliable method of conveying funds to certified candidates” and a back-up plan if the public funds are insufficient; for example, the funds may be allocated on a reduced basis with a provision to allow participating candidates to raise additional private funds up to the amount that the public funds would have provided. [NCGS 163-278.65(c); 163-278.99(c); 163-278.64(e); 163-278.98(f)]
- \* The program includes a provision for revoking participation in the program. [NCGS 163-278.64(e); 163-278.98(f)]
- \* Any public funds provided to candidates must be used for campaign purposes only. [NCGS 163-278.64(d)(5); 163-278.98(e)(5)]
- \* Any unspent funds of a certified candidate at the end of a campaign are presumed to be the public funds, up to the amount of such funds provided, and must be returned to the public fund. [NCGS 163-278.64(d)(7); 163-278.98(e)(7)]
- \* The program establishes a calendar of deadlines, compatible with the campaign cycle for the office(s) covered by the program, for filing a notice of intent to participate, submitting and verifying qualifying contributions, receiving and accounting for the public funds, and filing disclosure reports. [NCGS 163-278.64-278.66; 163-278.98-278.99A]
- \* The administration and enforcement of the program is described, along with penalties for violations and the process for filing a complaint. [NCGS 163-278.68, 163-278.70; 163-278.99D]
- \* The program describes the source(s) of money for the public funds, a method for publicly disclosing the amount in the fund before a new election cycle, and a statement about whether the interest earned if the public funds are in an interest-bearing account become part of the funds for the program or if they revert to some other part of the jurisdiction’s budget. [NCGS 163-278.63; 163-278.97]
- \*The Town of Chapel Hill will provide the State Board of Elections a copy of all finalized plans for the program including any ordinances or other regulations made to implement the pilot program.

**Comments, Questions and Concerns of the Town of Chapel Hill Council Committee  
on Voter Owned Elections in Response to the Draft Program**

February 26, 2008

The Committee would like to have an option for consideration that would provide for "rescue" or "matching" funds. The option should have a reasonable cap on the amount of public funding that would be provided. The option should provide for a triggering event and date. It was suggested that the program for judicial races be used to provide guidance for this. Perhaps rescue or matching funds should "kick in" gradually and not all at once. The Committee would like this to be something that is offered to the full Council and have the option of putting that forward at the required public hearing.

*There are several factors that should be considered when developing a plan for releasing "rescue" or "matching" funds.*

- A. *If the Committee would like to have the option to release "rescue" or "matching" funds to certified candidates, an initial determination would need to be made as to the activities that would trigger the release. In addition to the activities of non-participating opponents, groups that may engage in making "independent expenditures" that oppose a certified candidate or support a non-participating opponent should also be considered for triggering purposes. Generally, a review of disclosure reports by non-participating candidates will reveal the amount raised and spent for a particular period. Requiring expedited reporting by these candidates will ensure the timely release of matching funds. The additional consideration of outside groups making "independent expenditures" is not quite as simple. Expedited reporting schedules for these outside groups making independent expenditures will also be needed.*
  
- B. *One approach: The program would provide one-for-one matching funds, up to the amount of the original public grant, to a certified candidate 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 exceed the trigger for matching funds." The Committee would need to determine the trigger amount. The judicial fund's trigger amount is the base-level amount of public funding provided to the certified candidate. Therefore, if a non-participating candidate raises or spends one dollar more than this base-level of funding provided to the certified candidate, then matching funds would be released. The Committee could make the determination that this trigger amount is too low and that matching funds should not be released until funds in opposition to the certified candidate or support of the certified candidate's opponent are at a higher level. An example would be to only release matching funds when these funds in opposition to a certified candidate or in support of the opponent exceed 140% of the original public grant. (This means a certified Town*

*Council candidate who receives a \$3,000 grant will receive matching funds when a non-participating opponent raises or spends over \$4,200 – up to an additional \$3,000 in public funds, if the opponent raises/spends over \$7,200.) A non-participating candidate that raises or spends an amount during the campaign that exceeds 100% of the base-level grant provided to a certified candidate in the public financing program, would report that amount, within 24 hours of reaching that level, by fax or electronically, to the State Board of Elections. The State Board will notify the candidate of the expedited reporting schedule the candidate must then follow to ensure that the certified candidate receives the benefit of matching funds provided by the program. Additionally, outside groups that make independent expenditures in opposition to a certified candidate or in support of that certified candidate's opponent would report these independent expenditures when the group has spent \$500 or more within 24 hours to the State Board of Elections. The group will then be notified of an expedited reporting schedule to report any additional independent expenditures made after the initial filing.*

2. The Committee asked for clarification in the guidelines for the consequences of non-compliance with the requirements. What happens if a candidate commits to participate and then does not comply with expenditure or reporting requirements, for example?

*All disclosure reports filed by any candidate or other group are signed certifying that the report is true and correct. Knowingly certifying a false report as true and correct is a Class I felony. It would be my recommendation to include an additional certification statement to be included with every report filed by a candidate that is participating in the races included in the public funding program that states that the candidate is in compliance with the established guidelines of the Program. If a candidate does not comply with the guidelines, then a provision could be set forth in the guidelines that would require the certified candidate to forfeit funds that have been provided to the certified candidate. If a non-participating candidate or other group does not report timely, the State Board can impose civil penalties for the late filing of reports.*

3. Can the guidelines include a provision for the authorized amounts to be automatically reconfigured based on population growth and/or inflation factors so that re-approval by the State Board is not required?

*One approach: Create a term in the ordinance called "voter base" and define it as the number of registered voters with Active status in Chapel Hill on January 1 of the year before the election, rounded to the nearest 1,000. (This figure for the 2009 election is 33,000.) Then use the term as the basic for calculations. For example, the amount of the public grant for the Town Council (\$3,300) could be expressed in the ordinance as "ten cents for each member of the voter base, but not more than 10 percent above or below the public grant provided in the previous election." (Or it could be nine cents if the public grant is \$2,970. The 10% more-or-less language protects against a sudden swing.) The*

*number of qualifying contributions (75 for Town Council) could be expressed as "23 per 10,000 members of the voter base."*

4. Can the guidelines provide that money provided to candidates but not spent be required to be returned to the program? Can qualifying contributions that exceed the limit be required to be given to the program?

*Yes to both questions. Unspent funds must be returned as part of the statutory requirement, and turning in excess contributions is a good approach.*

5. Which Board of Elections will administer this pilot program? Is the State Board of Elections willing to be the Board of Elections that administers the program or will the Town need to work with the Orange County Board of Elections?

*The State Board of Elections will be pleased to administer the pilot program. In administering the pilot program, we may request assistance from the Orange County Board of Elections.*

6. There are a few terms not defined or clarified that may need to be; for example, "seed money" and the effect of these limits on contributions from candidates and family members.

*"Seed money" contributions can come from sources, and in amounts, that are legal for other candidates under state law and Chapel Hill's current ordinances.*

7. The Committee believes the seed money limit for mayoral candidates should be higher, perhaps \$1500.

*Fine.*

8. How are non-monetary contributions or re-used assets factored into this? For example, is the monetary value of previously purchased signs and stakes from a prior campaign considered seed money? Hammers? Other equipment? What about the value of in-kind contributions? For example, can the expenses associated with the hosting of a neighborhood coffee or cocktail party be counted as a qualifying contribution?

*As a general rule, items owned/ previously purchased by a campaign can be used again without it being considered a contribution. However, if a candidate used something he/she owned personally, the fair market value of that item would be considered an in-kind contribution. Anything purchased by the candidate or another person for the campaign is considered an in-kind contribution. In-kind contributions can be received during the pre-qualifying period, but cannot be received after the notice of intent has been filed through the date of the election. Expenses associated with a neighborhood coffee or cocktail party are considered in-kind contributions.*

9. What can funds be spent for? Mailings and advertisements are clearly expenses but what about reusable materials such as signs and stakes? What about computers or printers?

*NCGS 163-278.16B provides guidelines for permissible expenditures. Even though these purposes are restrictive, the use of public funds should be even more restrictive. Therefore, I would recommend adopting "expenditure guidelines" similar to those adopted for the judicial program. These guidelines are included in our 2008-2009 Campaign Finance Manual.*