

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE DRH70323-RR-29 (03/03)

Short Title: Legislative Campaigns Pilot. (Public)

Sponsors: Representatives Cotham, Jones, and Farmer-Butterfield (Primary Sponsors).

Referred to:

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 THEIR
4 CAMPAIGNS FROM A PUBLICLY SUPPORTED FUND, PROVIDED THAT THEY
5 GAIN AUTHORIZATION TO DO SO FROM REGISTERED VOTERS AND THAT
6 THEY ABIDE BY STRICT FUND-RAISING AND SPENDING LIMITS; AND TO
7 APPROPRIATE FUNDS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** Chapter 163 of the General Statutes is amended by adding a new
10 Article to read:

11 "Article 22R.

12 "The North Carolina Legislative Campaigns Pilot Program.

13 **"§ 163-278.395. Purpose and establishment of North Carolina Legislative Campaigns
14 Pilot Program.**

15 The purpose of this Article is to ensure the vitality and fairness of democratic elections in
16 North Carolina to the end that any eligible citizen of this State can realistically choose to seek
17 and run for public office. It is also the purpose of this Article to protect the constitutional rights
18 of voters and candidates from the detrimental effects of increasingly large amounts of money
19 being raised and spent in North Carolina to influence the outcome of elections. It is essential to
20 the public interest that the potential for corruption or the appearance of corruption is minimized
21 and that the equal and meaningful participation of all citizens in the democratic process is
22 ensured. Accordingly, this Article establishes the North Carolina Legislative Campaigns Pilot
23 Program using the North Carolina Voter-Owned Elections Fund as an alternative source of
24 campaign financing for candidates in selected legislative seats, if those candidates obtain a
25 sufficient number of qualifying contributions from registered voters in their districts and
26 voluntarily accept strict fund-raising and spending limits.

27 **"§ 163-278.396. Definitions.**

28 The following definitions apply in this Article:

- 29 (1) Advisory Council. – The Advisory Council established in G.S. 163-278.68.
30 (2) Board. – The State Board of Elections.
31 (3) Campaign-related expenditure. – An expenditure that benefits the candidate's
32 current campaign in accordance with guidelines established by the Board.
33 (4) Candidate. – An individual who becomes a candidate as described in
34 G.S. 163-278.6(4). The term includes a political committee authorized by the
35 candidate for that candidate's election.



- 1 (5) Certified candidate. – A candidate for office who chooses to receive
2 campaign funds from the Fund and who is certified under
3 G.S. 163-278.398(c). A write-in candidate authorized under G.S. 163-123 is
4 not eligible to become a certified candidate.
- 5 (6) Contested primary and contested general election. – An election in which
6 there are more candidates than the number to be elected.
- 7 (7) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund
8 pursuant to this Article is not a contribution and is not subject to the
9 limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or
10 G.S. 163-278.19.
- 11 (8) Expenditure. – Defined in G.S. 163-278.6.
- 12 (9) Fund. – The North Carolina Voter-Owned Elections Fund established in
13 G.S. 163-278.97.
- 14 (10) Independent expenditure. – Defined in G.S. 163-278.6.
- 15 (11) Nonparticipating candidate. – A candidate for office who is not seeking to be
16 certified under G.S. 163-278.398(c).
- 17 (12) Office. – The three Senate seats and six House of Representatives seats
18 designated pursuant to G.S. 163-278.397A.
- 19 (13) Participating candidate. – A candidate for office who has filed a declaration
20 of intent to participate under G.S. 163-278.398(a).
- 21 (14) Political committee. – Defined in G.S. 163-278.6.
- 22 (15) Qualifying contribution. – A contribution of not less than ten dollars
23 (\$10.00) and not more than one hundred dollars (\$100.00), in the form
24 prescribed for noncash monetary contributions in G.S. 163-278.14(b), to the
25 candidate or the candidate's committee that meets all of the following
26 conditions:
- 27 a. Made by any registered voter who resides in the district in which the
28 candidate seeks office at the time of the submittal of the report
29 specified in G.S. 163-278.398(c).
- 30 b. Made only during the qualifying period and obtained with the
31 approval of the candidate or candidate's committee.
- 32 c. Acknowledged by a written receipt, on a multicopy form approved
33 by the Board, that identifies the complete name, residence address,
34 and county of residence of the contributor and the amount and date of
35 the contribution made; states that the contributor is a registered voter;
36 states that the contributor authorizes the candidate to use the
37 contribution to qualify to receive funds from the Fund; and is signed
38 by the candidate or the candidate's representative.
- 39 (16) Qualifying period. – The period beginning September 1 of the year before
40 the election and ending on the day of the primary.
- 41 (17) Trigger for matching funds. – The dollar amount at which matching funds
42 are released for certified candidates under G.S. 163-278.401. In the case of a
43 primary, the trigger equals the maximum amount a participating candidate is
44 permitted by G.S. 163-278.398(b) to raise in qualifying contributions. In the
45 case of a general election, the trigger equals the funding available under
46 G.S. 163-278.399(b)(4).

47 **"§ 163-278.397. Sources of funding.**

48 (a) Use of Fund. – The election campaigns of certified candidates for office shall be
49 financed, and administrative and enforcement costs of the Board related to this Article shall be
50 paid from the Fund.

51 (b) Sources of Funding. – Money received from all the following sources must be

1 deposited in the Fund:

- 2 (1) Unspent Fund revenues distributed for an election that remain unspent or
3 uncommitted at the time the recipient is no longer a certified candidate in the
4 election.
- 5 (2) Money ordered returned to the Fund in accordance with G.S. 163-278.404.
- 6 (3) Money paid to the Fund equal to excess contributions as provided in
7 G.S. 163-278.398(e)(1).
- 8 (4) Voluntary donations made directly to the Fund.
- 9 (5) Appropriations from the General Fund.

10 (c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and every
11 four years thereafter, the Board, in conjunction with the Advisory Council, shall prepare and
12 provide to the Joint Legislative Commission on Governmental Operations of the General
13 Assembly a report documenting, evaluating, and making recommendations relating to the
14 administration, implementation, and enforcement of this Article. This report may be combined
15 with other reports evaluating the Public Campaign Fund under Article 22D of this Chapter and
16 the Fund under Article 22J of this Chapter. In its report, the Board shall set out the funds
17 received to date and the expected needs of the Fund during the next election cycle and make
18 recommendations about the feasibility of expanding its provisions to include other candidates
19 for State office based on the experience of this Article and the experience of similar programs
20 in North Carolina and other states. The Board shall also evaluate and make recommendations
21 regarding how to address activities that could undermine the purpose of this Article, including
22 spending that appears to target candidates but is not reached by regulation.

23 **"§ 163-278.397A. Selection of districts for pilot program.**

24 Nine districts shall be selected for the pilot program every two years. In order to provide a
25 useful test of the provisions in this Article, the pilot program shall occur in districts (i) that are
26 relatively competitive, based on the ratio of party affiliation of registered voters in the district
27 compared to the statewide ratio, and (ii) where there is a demonstrated interest to use the pilot
28 program. The districts shall be selected in the following manner:

- 29 (1) By July 1 of the year before the election, the Executive Director of the Board
30 shall prepare a list of the legislative districts in which the ratio in the district
31 of registered voters affiliated with the State's majority party to voters
32 affiliated with the minority party is greater than seventy-five percent (75%)
33 and less than one hundred twenty-five percent (125%) of the ratio between
34 those parties statewide for voters registered for the legislative primary
35 election before the July 1 deadline.
- 36 (2) From the list of eligible districts prepared by the Executive Director, the
37 majority and minority leaders of the Senate shall each select up to six
38 districts in the Senate, and the majority and minority leaders of the House of
39 Representatives shall each select up to 12 districts in the House. Those
40 leaders shall report their recommended selections to the Executive Director
41 of the Board no later than July 31 of the year before the election.
- 42 (3) The State Board of Elections by August 15 shall consider the
43 recommendations provided by the legislative leaders in subdivision (2) of
44 this section and shall make a final selection of three districts in the Senate
45 and six districts in the House of Representatives that meet the criteria
46 described in subdivision (1) of this section. The selection shall be made by at
47 least a three-fourths vote of the members of the State Board present and
48 voting.

49 **"§ 163-278.398. Requirements for participation.**

50 (a) Declaration of Intent to Participate. – Any individual choosing to receive campaign
51 funds from the Fund shall first file with the Board a declaration of intent to participate in the act

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

8 (b) Demonstration of Support of Candidacy. – Participating candidates who seek
9 certification to receive campaign funds from the Fund shall first, during the qualifying period,
10 obtain qualifying contributions from at least 300 registered voters in the case of a Senate
11 candidate and at least 150 registered voters in the case of a House of Representatives candidate
12 in an aggregate sum that at least equals six thousand dollars (\$6,000) in the case of a Senate
13 candidate and three thousand dollars (\$3,000) in the case of a House candidate, but that does
14 not exceed forty thousand dollars (\$40,000) in the case of a Senate candidate and twenty-five
15 thousand dollars (\$25,000) in the case of a House candidate. Multiple contributions from the
16 same individual to the same candidate shall not count as more than one qualifying contribution.
17 No payment, gift, anything of value, or the opportunity to win anything of value shall be given
18 in exchange for a qualifying contribution.

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

- 22 (1) Signed and filed a declaration of intent to participate in this Article.
- 23 (2) Submitted a report itemizing the appropriate number of qualifying
24 contributions received from registered voters, which the Board shall verify
25 through a random sample or other means it adopts. The report shall include
26 the county of residence of each registered voter listed.
- 27 (3) Filed a valid notice of candidacy pursuant to this Chapter.
- 28 (4) Otherwise met the requirements for participation in this Article.

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

32 (d) Final Report for Qualifying Contributions. – No later than five business days after
33 the end of the qualifying period, all participating candidates shall submit a report to the Board
34 of all previously unreported qualifying contributions, together with copies of the contribution
35 forms described in G.S. 163-278.396(15), in accordance with procedures developed by the
36 Board. Within seven business days after submittal of the final report, the Board shall determine,
37 through a random audit or other means it adopts, whether the contributions abide by the
38 definition of qualifying contributions, whether they must be returned to the donor, and whether
39 they exceed the maximum amount of qualifying contributions.

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

- 43 (1) Beginning August 1 of the year before the election and before the filing of a
44 declaration of intent, a candidate for office may accept in contributions up to
45 five thousand dollars (\$5,000) from sources and in amounts permitted by
46 Article 22A of this Chapter and may expend up to five thousand dollars
47 (\$5,000) for any campaign purpose related to the upcoming election. A
48 candidate who exceeds either of these limits shall be ineligible to file a
49 declaration of intent or receive funds from the Fund. However, the
50 acceptance of contributions in excess of that twenty thousand dollar
51 (\$20,000) limit does not render the candidate ineligible if the candidate pays

- 1 to the Board an amount equal to the contributions accepted by the candidate
2 in excess of that limit. The Board shall deposit all such payments into the
3 Fund.
- 4 (2) From the filing of a declaration of intent through the end of the qualifying
5 period, a candidate may accept only qualifying contributions, contributions
6 under ten dollars (\$10.00) from voters residing in the candidate's district,
7 in-kind party contributions as permitted in subdivision (3) of this subsection,
8 and personal and family contributions permitted under subdivision (4) of this
9 subsection. The total contributions the candidate may accept during this
10 period shall not exceed the maximum qualifying contributions for that
11 candidate. Except for personal and family contributions permitted under
12 subdivision (4) of this subsection, multiple contributions from the same
13 contributor to the same candidate shall not exceed one hundred dollars
14 (\$100.00). In addition to these contributions, the candidate may only expend
15 during this period the remaining money raised pursuant to subdivision (1) of
16 this subsection and possible matching funds received pursuant to
17 G.S. 163-278.401. If the candidate has any remaining money that was raised
18 as contributions before August 1 of the year before the election, the
19 candidate may not expend that money after filing the declaration of intent,
20 except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of
21 G.S. 163-278.16B(a).
- 22 (3) After the qualifying period and through the date of the general election, the
23 candidate shall cease campaign-related fund-raising activities and shall
24 expend only the funds the candidate receives from the Fund pursuant to
25 G.S. 163-278.399(b)(4) plus any funds remaining from the qualifying period
26 and possible matching funds. In addition, during that period a candidate may
27 accept in-kind contributions from political party executive committees, up to
28 an aggregate value of ten percent (10%) of the amount the candidate is
29 entitled to receive under G.S. 163-278.399(b)(4).
- 30 (4) During the qualifying period, the candidate may contribute up to one
31 thousand dollars (\$1,000) of that candidate's own money to the campaign.
32 Debt incurred by the candidate for a campaign expenditure shall count
33 toward that limit. During the qualifying period, the candidate may accept in
34 contributions up to one thousand dollars (\$1,000) from each member of that
35 candidate's family consisting of spouse, parent, child, brother, and sister, as
36 long as the candidate accepts no more than two thousand dollars (\$2,000)
37 from all those family members combined. Up to one hundred dollars
38 (\$100.00) of a contribution from the candidate's family member may be
39 treated as a qualifying contribution if it meets the requirements of
40 G.S. 163-278.396(15)a. and b.
- 41 (5) A candidate and the candidate's committee shall limit the use of all revenues
42 permitted by this subsection to expenditures for campaign-related purposes
43 only related to the upcoming election. The Board shall publish guidelines
44 outlining permissible campaign-related expenditures. In establishing those
45 guidelines, the Board shall differentiate expenditures that reasonably further
46 a candidate's campaign from expenditures for personal use that would be
47 incurred in the absence of the candidacy.
- 48 (6) Except as provided in subdivision (1) of this subsection, any contribution
49 received by a participating or certified candidate that falls outside that
50 permitted by this subsection shall be returned to the donor as soon as
51 practicable. Contributions intentionally made, solicited, or accepted in

1 violation of this Article are subject to civil penalties as specified in
2 G.S. 163-278.403. The funds involved shall be forfeited to the Civil Penalty
3 and Forfeiture Fund.

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

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

13 **§ 163-278.399. Distribution from the Fund.**

14 (a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate
15 revenue from the Fund as follows:

16 (1) In an amount determined under subdivision (b)(2) of this section within five
17 business days of receipt of the candidate's primary grant reports. The
18 distribution of grants for a contested primary under subdivision (b)(2) of this
19 section shall be done incrementally, based upon reports by the candidate of
20 qualifying contributions raised. Those reports shall be made in accordance
21 with G.S. 163-278.400(b) and shall be no more frequent than one per 10
22 business days.

23 (2) In an amount determined under subdivision (b)(4) of this section within five
24 business days after the certified candidate's name is approved to appear on
25 the ballot in a contested general election, but no earlier than five business
26 days after the primary.

27 (b) Amount of Fund Distribution. – No later than August 1 of the second year before an
28 election, the Board shall determine the amount of funds, rounded to the nearest one hundred
29 dollars (\$100.00), to be distributed to certified candidates as follows:

30 (1) No primary. – No funds shall be distributed.

31 (2) Contested primaries. – No funds shall be distributed except as provided in
32 G.S. 163-278.401.

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

34 (4) Contested general elections. – Funds shall be distributed to a certified
35 candidate for the Senate in an amount equal to the median amount of
36 campaign-related expenditures made by all major party candidates who
37 reported campaign expenditures for contested general election races for the
38 Senate for the immediately preceding two general elections, but not less than
39 eighty thousand dollars (\$80,000). Funds shall be distributed to a certified
40 candidate for the House in an amount equal to the median amount of
41 campaign-related expenditures made by all major party candidates who
42 reported campaign expenditures for contested general election races for the
43 House for the immediately preceding two general elections, but not less than
44 fifty thousand dollars (\$50,000). For purposes of this subsection,
45 expenditures are made in the general election if they are required to be
46 reported on the third and fourth quarterly reports.

47 (c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer
48 and the State Controller, shall develop a rapid, reliable method of conveying funds to certified
49 candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that
50 is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in
51 the Fund is insufficient to fully fund all certified candidates, then the available money shall be

1 distributed proportionally, according to each candidate's eligible funding, and the candidate
2 may raise additional money in the same manner as a noncertified candidate for the same office
3 up to the unfunded amount of the candidate's eligible funding.

4 **"§ 163-278.400. Reporting requirements.**

5 (a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any
6 noncertified candidate with a certified opponent shall report total income, expenses, and
7 obligations to the Board by facsimile machine or electronically within 24 hours after the total
8 amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds
9 eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.396(17). Any
10 entity making independent expenditures in support of or opposition to a certified candidate or
11 in support of a candidate opposing a certified candidate, or paying for electioneering
12 communications, as defined in G.S. 163-278.80 or G.S. 163-278.90, that refer to one of those
13 candidates, shall report the total funds received, spent, or obligated for those expenditures or
14 electioneering communications to the Board by facsimile machine or electronically within 24
15 hours after the total amount of expenditures or obligations made, or funds raised or borrowed,
16 for the purpose of making the independent expenditures or electioneering communications,
17 exceeds three thousand dollars (\$3,000). After this 24-hour filing, the noncertified candidate or
18 independent expenditure or electioneering communications entity shall comply with an
19 expedited reporting schedule. The schedule and forms for reports required by this subsection
20 shall be supplied by the Board.

21 (b) Reporting by Participating and Certified Candidates. – Notwithstanding other
22 provisions of law, participating and certified candidates shall report any money received,
23 including all previously unreported qualifying contributions, all campaign expenditures,
24 obligations, and related activities to the Board according to procedures developed by the Board.
25 A certified candidate who ceases to be certified or ceases to be a candidate or who loses a
26 primary, special election, or general election shall file a final report with the Board and at the
27 same time return any unspent revenues received from the Fund. In developing these
28 procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

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

32 **"§ 163-278.401. Matching funds.**

33 (a) When Matching Funds Become Available. – When any report or group of reports
34 shows that 'funds in opposition to a certified candidate or in support of an opponent to that
35 candidate' as described in this section exceed the trigger for matching funds as defined in
36 G.S. 163-278.396(17), the Board shall issue immediately to that certified candidate an
37 additional amount equal to the reported excess within the limits set forth in this section. 'Funds
38 in opposition to a certified candidate or in support of an opponent to that candidate' shall be
39 equal to the sum of subdivisions (1) and (2) as follows:

40 (1) The greater of the following:

41 a. Campaign expenditures or obligations made, or funds raised or
42 borrowed, whichever is greater, reported by any one nonparticipating
43 opponent of a certified candidate. Where a certified candidate has
44 more than one nonparticipating opponent, the measure shall be taken
45 from the nonparticipating candidate showing the highest relevant
46 dollar amount.

47 b. The funds distributed in accordance with G.S. 163-278.399(b) to a
48 certified opponent of the certified candidate.

49 (2) The sum of all expenditures and electioneering communications reported in
50 accordance with G.S. 163-278.400(a) of entities making independent

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

3 (b) Limit on Matching Funds in Contested Primary. – Total matching funds to a
4 certified candidate in a contested primary shall be limited to an amount equal to two times the
5 maximum qualifying contributions. Matching funds are available to a certified candidate with
6 an opponent in the primary or to a certified candidate who is clearly referred to in expenditures
7 reportable under G.S. 163-278.400 made in opposition to that candidate.

8 (c) Limit on Matching Funds in Contested General Election. – Total matching funds to
9 a certified candidate in a contested general election shall be limited to an amount equal to two
10 times the amount described in G.S. 163-278.399(b)(4).

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

28 (e) Proportional Measuring of Multicandidate Communications. – In calculating the
29 amount of matching funds a certified candidate is eligible to receive under this section, the
30 Board shall include the proportion of expenditures, obligations, or payments for multicandidate
31 communications that pertains to the candidate.

32 (f) No Matching Funds for Communications Supporting or Opposing All Candidates. –
33 No matching funds are available under this section as a result of a communication that supports
34 all candidates for the same office or opposes all candidates for the same office.

35 **"§ 163-278.402. Unaffiliated and new-party candidates.**

36 Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates
37 certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same
38 amounts and at the same time as specified in G.S. 163-278.399. For unaffiliated candidates and
39 new-party candidates, the deadline for seeking certification to receive revenue from the Fund is
40 noon on the first business day of July of the election year.

41 **"§ 163-278.403. Civil penalty.**

42 In addition to any other penalties that may be applicable, any individual, political
43 committee, or other entity that violates any provision of this Article is subject to a civil penalty
44 of up to ten thousand dollars (\$10,000) per violation or three times the amount of any financial
45 transactions involved in the violation, whichever is greater. In addition to any fine, for good
46 cause shown, a candidate found in violation of this Article may be required to return to the
47 Fund all amounts distributed to the candidate from the Fund. If the Board makes a
48 determination that a violation of this Article has occurred, the Board shall calculate and assess
49 the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the
50 amount that has been assessed. The Board shall then proceed in the manner prescribed in
51 G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the

1 Board may consider as a mitigating factor any circumstances out of the candidate's control.

2 **"§ 163-278.404. Enforcement and administration.**

3 (a) Enforcement by the Board. – The Board, with the advice of the Advisory Council,
4 shall administer the provisions of this Article.

5 (b) Appeals. – The initial decision on an issue concerning qualification, certification, or
6 distribution of funds under this Article shall be made by the Executive Director of the Board.
7 The procedure for challenging that decision is as follows:

8 (1) An individual or entity aggrieved by a decision by the Executive Director of
9 the Board may appeal to the full Board within three business days of the
10 decision. The appeal shall be in writing and shall set forth the reasons for the
11 appeal.

12 (2) Within five business days after an appeal is properly made, and after due
13 notice is given to the parties, the Board shall hold a hearing. The appellant
14 has the burden of providing evidence to demonstrate that the decision of the
15 Executive Director was improper. The Board shall rule on the appeal within
16 three business days after the completion of the hearing.

17 (c) Board to Adopt Procedures and Issue Opinions. – The Board shall adopt procedures
18 and issue opinions to ensure effective administration of this Article. Such procedures and
19 opinions shall include, but not be limited to, procedures for obtaining qualifying contributions,
20 certification of candidates, addressing circumstances involving special elections, vacancies,
21 recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of
22 Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance
23 with this Article. The Board shall adopt procedures for the distribution of matching money that
24 further the purpose and avoid the subversion of G.S. 163-278.401. For races involving special
25 elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall
26 establish procedures for qualification, certification, disbursement of Fund revenues, and return
27 of unspent Fund revenues. Where applicable, the Board shall adapt the provisions of
28 G.S. 163-278.64A. The Board shall fulfill each of these duties in consultation with the
29 Advisory Council.

30 (d) Report to the Public. – The Advisory Council shall issue a report by March 1, 2013,
31 and every two years thereafter that evaluates and makes recommendations about the
32 implementation of this Article and the feasibility of expanding its provisions to include other
33 legislative seats based on the experience of the Fund and the experience of similar programs in
34 other states. The Advisory Council shall also evaluate and make recommendations regarding
35 how to address activities that could undermine the purpose of this Article, including spending
36 that appears to target candidates but is not reached by regulation."

37 **SECTION 2.** The provisions of this act are severable. If any provision of this act is
38 held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions
39 of this act that can be given effect without the invalid provision.

40 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act
41 applies to elections for the seats representing six districts in the House of Representatives and
42 three districts in the Senate selected in accordance with G.S. 163-278.397A, as enacted by
43 Section 1 of this act, in 2012 and thereafter.