§ 163-278.34. Civil penalties.

(a) Civil Penalties for Late Filing. – Except as provided in G.S. 163-278.9 and G.S. 163-278.9A, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and a civil late penalty as follows:

(1) Two hundred fifty dollars ($250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars ($10,000); and

(2) Fifty dollars ($50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars ($500.00).

If the form is filed by mail, no civil late penalty shall be assessed for any day after the date of postmark. No civil late penalty shall be assessed for any day when the Board office at which the report is due is closed. The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by mail, of the penalties under this section. The State Board of Elections may waive a late penalty if it determines there is good cause for the waiver.

If the Board determines by clear and convincing evidence that the late filing constitutes a willful attempt to conceal contributions or expenditures, the Board may assess a civil penalty in an amount to be determined by that Board, plus the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the contributions and expenditures willfully attempted to be concealed.

(b) Civil Penalties for Illegal Contributions and Expenditures. – If an individual, person, political committee, referendum committee, candidate, or other entity intentionally makes or accepts a contribution or makes an unlawful expenditure in violation of this Article, then that entity shall pay to the State Board of Elections, in an amount to be determined by that Board, a civil penalty and the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the unlawful contribution or expenditure involved in the violation. The State Board of Elections may, in addition to the civil penalty, order that the amount unlawfully received be paid to the State Board by check, and any money so received by the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North Carolina.

(c) Civil Remedies Other Than Penalties. – The State Board of Elections, in lieu of or in addition to imposing a civil penalty under subsection (a) or (b) of this section, may take one or more of the following actions with respect to a violation for which a civil penalty could be imposed:

(1) Issue an order requiring the violator to cease and desist from the violation found.

(2) Issue an order to cease receiving contributions and making expenditures until a delinquent report has been filed and any civil penalty satisfied.

(3) Issue an order requiring the violator to take any remedial action deemed appropriate by the Board.

(4) Issue an order requiring the violator to file any report, statement, or other information as required by this Article or the rules adopted by the Board.

(5) Publicly reprimand the violator for the violation.

(d) Facts in Mitigation. – An individual or other entity notified that a penalty has been assessed against it may submit an affidavit to the State Board of Elections stating the facts in

mitigation. The State Board of Elections may waive a civil penalty in whole or in part if it determines there is good cause for the waiver.

(e) Calculation and Assessment. – The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) or (b) of this section and shall notify the person who is assessed the civil penalty of the amount. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator either to pay the assessment or to contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. The State Board of Elections shall pay the clear proceeds of civil penalties collected under this section to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2. The State Board of Elections shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the Civil Penalty and Forfeiture Fund. Monies set aside for the costs of enforcement and the costs of collection shall be credited to accounts of the State Board of Elections.

(f) OAH Review. – After assessing a civil penalty under subsection (b) of this section or imposing a civil remedy under subsection (c) of this section, appeal of the decision of the State Board of Elections under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes. (1973, c. 1272, s. 1; 1975, c. 565, s. 5; 1979, c. 1073, s. 19; 1997-515, s. 7(a); 2001-353, s. 10; 2001-419, s. 1; 2007-391, ss. 2(a), 37; 2008-187, s. 33(a); 2017-6, s. 3; 2018-146, s. 3.1(a) (b); 2018-146, s. 4.4.)