

House Bill 405

By: Representatives Buckner of the 82nd, Hill of the 147th, Dodson of the 84th, Post 1, Broome of the 141st, Post 2 and Barnes of the 84th, Post 2

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 45 of the Official Code of Georgia Annotated, relating to the public officers
2 and employees, so as to provide for an oath of an elected public officer of knowledge of
3 ongoing residency requirements; to provide for a written affidavit evidencing such oath; to
4 provide for forfeiture of moneys and payment of fines for violation of oath; to provide an
5 effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,
9 is amended by striking Code Section 45-3-1, relating to oaths required of public officers, in
10 its entirety and inserting in its place the following:

11 "45-3-1.

12 Every public officer shall:

13 (1) Take the oath of office;

14 (2) Take any oath prescribed by the Constitution of Georgia;

15 (3) Swear that he or she is not the holder of any unaccounted for public money due this
16 state or any political subdivision or authority thereof;

17 (4) Swear that he or she is not the holder of any office of trust under the government of
18 the United States, any other state, or any foreign state which he or she is by the laws of
19 the State of Georgia prohibited from holding;

20 (5) Swear that he or she is otherwise qualified to hold said office according to the
21 Constitution and laws of Georgia;

22 (6) Swear that he or she will support the Constitution of the United States and of this
23 state; and

24 (7) If elected by any circuit or district, swear that he or she has been a resident thereof
25 for the time required by the Constitution and laws of this state and that he or she
26 understands and acknowledges the ongoing residency requirement and that, under Code

1 Section 45-5-1, his or her office shall be deemed immediately vacated if the ongoing
 2 residency requirement ceases to be met."

3 SECTION 2.

4 Said title is further amended by striking Code Section 45-3-2, relating to form and
 5 subscription of oaths, in its entirety and inserting in its place the following:

6 "45-3-2.

7 The form of the oath prescribed in Code Section 45-3-1 and the oath of office to be taken
 8 and subscribed shall be forwarded with the dedimus potestatem and shall be taken and
 9 subscribed at the time of receiving the commission before the officer to whom the same is
 10 directed and in conformity with any directions. The form of the oath required in paragraph
 11 (7) of Code Section 45-3-1 shall be by a signed written affidavit which includes
 12 acknowledgment by the elected public officer of paragraph (5) of subsection (a) of Code
 13 Section 45-5-1, relating to immediate vacancy of office for failure to meet ongoing
 14 residency requirements."

15 SECTION 3.

16 Said title is further amended by striking Code Section 45-5-1, relating to the vacancy of
 17 public offices under certain circumstances, in its entirety and inserting in its place the
 18 following:

19 "45-5-1.

20 (a) All offices in the state shall be vacated:

21 (1) By the death of the incumbent;

22 (2) By resignation, when accepted;

23 (3) By decision of a competent tribunal declaring the office vacant;

24 (4) By voluntary act or misfortune of the incumbent whereby he or she is placed in any
 25 of the specified conditions of ineligibility to office;

26 (5) By the incumbent ceasing to be a resident of the state or of the county, circuit, or
 27 district for which he or she was elected;

28 (6) By failing to apply for and obtain commissions or certificates or by failing to qualify
 29 or give bond, or both, within the time prescribed by the laws and Constitution of Georgia;
 30 or

31 (7) By abandoning the office or ceasing to perform its duties, or both.

32 (b) Upon the occurrence of a vacancy in any office in the state, the officer or body
 33 authorized to fill the vacancy or call for an election to fill the vacancy shall do so without
 34 the necessity of a judicial determination of the occurrence of the vacancy. Before doing
 35 so, however, the officer or body shall give at least ten days' notice to the person whose

1 office has become vacant, except that such notice shall not be required in the case of a
2 vacancy caused by death, final conviction of a felony, or written resignation. The decision
3 of the officer or body to fill the vacancy or call an election to fill the vacancy shall be
4 subject to an appeal to the superior court; and nothing in this subsection shall affect any
5 right of any person to seek a judicial determination of the eligibility of any person holding
6 office in the state. The provisions of this subsection shall apply both to vacancies
7 occurring under this Code section and to vacancies occurring under other laws of this state.

8 (c) Any elected public officer whose office is vacated pursuant to paragraph (5) of
9 subsection (a) of this Code section shall forfeit any moneys received after such vacancy.
10 Moneys shall be deemed to be received if such moneys are converted to the public officer's
11 possession through acceptance of cash, tendering a check or money order for payment, or
12 through other means. This shall not apply to moneys received for services performed prior
13 to the vacancy. An elected public officer shall be subject to fines for violation of this
14 subsection as follows:

15 (1) A fine of \$100.00 for receiving the first payment after the vacancy occurs;

16 (2) A fine of \$200.00 for receiving the second payment after the vacancy occurs;

17 (3) A fine of \$300.00 for receiving the third payment after the vacancy occurs; and

18 (4) A fine of \$500.00 for receiving any payment after the third payment after the vacancy
19 occurs."

20 SECTION 4.

21 This Act shall become effective on July 1, 2003.

22 SECTION 5.

23 All laws and parts of laws in conflict with this Act are repealed.