

House Bill 1142

By: Representatives Walker of the 115<sup>th</sup>, Royal of the 140<sup>th</sup>, Greene of the 134<sup>th</sup>, Purcell of the 122<sup>nd</sup>, Morris of the 120<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and primaries generally, so as to provide for the burden of proof in hearings challenging a candidate's qualifications based upon residency; to provide for an award of costs and attorneys' fees for frivolous or harassing candidate qualification challenges; to provide for certain rebuttable presumptions concerning residency; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and primaries generally, is amended by adding new subsections (b.1) and (f) to Code Section 21-2-5, relating to the determinations of qualifications of candidates for federal and state office, to read as follows:

"(b.1) If a challenge to a candidate's qualifications is based upon whether the candidate meets the residency requirements to seek the office for which such candidate is offering for nomination or election, the burden of proof at the hearing shall be on such candidate to demonstrate that such candidate meets the residency requirements to seek such office."

"(f) If the Secretary of State finds that the challenge filed by an elector under this Code section was frivolous, was totally without a legal or factual basis, or was brought solely for the purpose of harassment of the candidate, the Secretary of State may award costs and reasonable attorneys' fees in defending such challenge to the candidate and against the elector."

**SECTION 2.**

Said chapter is further amended by adding new subsections (b.1) and (f) to Code Section 21-2-6, relating to the determinations of qualifications of candidates for county and municipal office, to read as follows:

1 "(b.1) If a challenge to a candidate's qualifications is based upon whether the candidate  
2 meets the residency requirements to seek the office for which such candidate is offering for  
3 nomination or election, the burden of proof at the hearing shall be on such candidate to  
4 demonstrate that such candidate meets the residency requirements to seek such office."

5 "(f) If the superintendent finds that the challenge filed by an elector under this Code  
6 section was frivolous, was totally without a legal or factual basis, or was brought solely for  
7 the purpose of harassment of the candidate, the superintendent may award costs and  
8 reasonable attorneys' fees in defending such challenge to the candidate and against the  
9 elector."

### 10 **SECTION 3.**

11 Said chapter is further amended by adding a new subsection (c) to Code Section 21-2-217,  
12 relating to rules for determining residency, to read as follows:

13 "(c) In hearings to determine a challenge to the qualifications of a candidate based upon  
14 residency, the following presumptions shall apply, but may be rebutted by a preponderance  
15 of the evidence adduced at a hearing on such challenge:

16 (1) The residence of a candidate shall be presumed not to be in buildings or structures  
17 which are used primarily for commercial or business purposes;

18 (2) The residence of a candidate shall be presumed not to be in any vehicle, motor home,  
19 camper, or other vehicle, trailer, or other conveyance which is readily moveable and is  
20 not permanently affixed to the property on which it is located;

21 (3) The residence of a candidate shall be presumed not to be on any property on which  
22 there is no permanent dwelling structure;

23 (4) In the case of a candidate who moves his or her place of residency from a location  
24 outside the district from which such candidate desires to be elected to a residence located  
25 within such district within the 60 day period prior to the date on which such candidate  
26 must be a resident of the district in order to qualify to seek such office or within 60 days  
27 prior to qualifying to seek the office, the residence of a candidate for purposes of seeking  
28 elective office shall be presumed to remain at the site of the candidate's previous  
29 residence;

30 (5) The residence of a candidate shall be presumed to be at the dwelling place where  
31 such candidate resides a majority of his or her nonworking hours;

32 (6) The residence of a candidate shall be presumed to be at the dwelling place where  
33 such candidate spends a majority of his or her nights; and

34 (7) The residence of a candidate shall be presumed to be the same as that of his or her  
35 spouse."

## 1

2

## 4

5