

The House Committee on Governmental Affairs offers the following substitute to SB 264:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to
2 elections and primaries generally, so as to provide for the burden of proof in hearings
3 challenging a candidate's qualifications based upon residency; to provide for an award of
4 costs and attorneys' fees for frivolous or harassing candidate qualification challenges; to
5 provide for certain rebuttable presumptions concerning residency; to provide for certain
6 requirements to qualify for a party's nomination or to run for public office; to repeal
7 conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
11 primaries generally, is amended by revising Code Section 21-2-5, relating to the
12 determinations of qualifications of candidates for federal and state office, by adding new
13 subsections to read as follows:

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

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

SECTION 2.

Said chapter is further amended by revising Code Section 21-2-6, relating to the determinations of qualifications of candidates for county and municipal office, by adding new subsections 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 superintendent 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 superintendent may award costs and reasonable attorneys' fees in defending such challenge to the candidate and against the elector."

SECTION 3.

Said chapter is further amended by revising Code Section 21-2-8, relating to eligibility for party nomination or public office, as follows:

"21-2-8.

No person shall be eligible for party nomination for or election to public office, nor shall he or she perform any official acts or duties as a superintendent, registrar, deputy registrar, poll officer, or party officer, as set forth in this chapter, in connection with any election or primary held under this chapter, if under the laws of this state, any other state, or the United States he or she has been convicted and sentenced, in any court of competent jurisdiction, for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude, or was sentenced to incarceration for more than 30 days in a proceeding resulting in a dishonorable or bad conduct military discharge, unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude. Additionally, the person shall not be holding illegally any public funds. In the event of the disqualification of the superintendent as described in this Code section, the clerk of the superior court shall act in his or her stead. Notwithstanding the above, the governing authority of a municipality shall appoint an individual to serve as superintendent for municipal elections or municipal primaries in the event of the disqualification of the municipal superintendent, unless the municipality has contracted with a county government for the provision of election services, in which event the clerk of the superior court shall act in place of a disqualified superintendent."

SECTION 4.

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

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

(1) The legal residence or domicile of a candidate shall be presumed to be at the residence for which the candidate has a current homestead exemption;

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

(3) The legal residence or domicile of a candidate shall be presumed not to be in any vehicle, motor home, camper, or other vehicle, trailer, or other conveyance which is readily movable and is not permanently affixed to the property on which it is located;

(4) The legal residence or domicile of a candidate shall be presumed not to be on any property on which there is no permanent dwelling structure;

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

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

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

(8) The legal residence or domicile of a candidate shall be presumed to be the same as that of his or her spouse."

SECTION 5.

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