

House Bill 370

By: Representatives Fleming of the 121<sup>st</sup>, Wilkerson of the 38<sup>th</sup>, Fludd of the 64<sup>th</sup>, England of the 116<sup>th</sup>, Powell of the 32<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to ethics  
2 in government, so as to provide for waivers of certain civil penalties and fees incurred by  
3 candidates for local elected office; to provide for exceptions; to provide for refunds of certain  
4 civil penalties and fees; to provide for legislative findings; to provide for related matters; to  
5 provide an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 The General Assembly finds that:

- 9 (1) The Department of Audits and Accounts performed a thorough review of the  
10 operations of the Georgia Government Transparency and Campaign Finance Commission  
11 and issued a report on October 15, 2014, entitled "Commission's Effectiveness Limited by  
12 Poor Management Controls" which found that the Georgia Government Transparency and  
13 Campaign Finance Commission's e-filing system incorrectly flagged individuals as late  
14 filers or as being in noncompliance when they had in fact submitted the required filings.  
15 Consequently, the Georgia Government Transparency and Campaign Finance Commission  
16 cannot rely on the system to determine the late fees owed or whether penalties should be  
17 imposed;
- 18 (2) In such report, the State Auditor noted that "some aspects of the Act have not been  
19 implemented, and there is evidence of inconsistent treatment of late filings and complaint  
20 investigations, resulting in fines and fees being assessed or waived in an inequitable  
21 manner. Specifically, the Commission lacks formalized policies and procedures and a  
22 monitoring system";
- 23 (3) In such report, the State Auditor stated that Georgia Government Transparency and  
24 Campaign Finance Commission staff also noted that the e-filing system was not updated  
25 to reflect changes in the law which resulted in the fee system "incorrectly flagging some  
26 individuals who are no longer required to submit filings to the Commission as late or

27 nonfilers" and assessing fees even when they were no longer required to file with the  
28 Georgia Government Transparency and Campaign Finance Commission;

29 (4) Because the Georgia Government Transparency and Campaign Finance Commission's  
30 e-filing system serves as the basis for calculating and assessing late fees, individuals have  
31 been wrongfully identified as being in violation of the law, their reputations have been  
32 wrongfully tarnished, and they have been wrongfully assessed fees;

33 (5) The civil penalty for a filing that was not filed by the due date was \$125.00. For a  
34 filing that was not filed within 15 days of the due date, there was an additional \$250.00  
35 penalty. For a filing that was not filed within 45 days of the due date, there was an  
36 additional \$1,000.00 penalty. In many cases, the fees assessed greatly exceeded the  
37 compensation that local officials receive for their service on a city council, county  
38 commission, or school board;

39 (6) The law has now been changed to prevent this situation from continuing, but good  
40 people who have or would serve in a local elected office are discouraged from running and  
41 serving due to these systemic errors at the Georgia Government Transparency and  
42 Campaign Finance Commission; and

43 (7) It is the desire of the General Assembly to assist these candidates to correct this  
44 problem by creating a rebuttable presumption that candidates for local office filed or  
45 attempted to file campaign and personal financial disclosure reports with the Georgia  
46 Government Transparency and Campaign Finance Commission and authorizing the  
47 Georgia Government Transparency and Campaign Finance Commission to waive late fees,  
48 fines, and civil penalties which were imposed on candidates for local government office  
49 for failure to file or incomplete filing of such reports during the time this system was in  
50 place and to refund late fees, fines, and civil penalties remitted by such candidates after  
51 January 1, 2014, for such alleged violations occurring before that date. However, as to  
52 candidates for local government office who are shown to have knowingly and willfully  
53 failed to make such filings, the Georgia Government Transparency and Campaign Finance  
54 Commission may pursue enforcement actions against such persons and sanction them  
55 accordingly.

56 **SECTION 2.**

57 Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to ethics in  
58 government, is amended by adding a new Code section to read as follows:

59 "21-5-7.2.

60 (a) Upon written request of a candidate or in a response by the candidate to any  
61 notification from the commission alleging noncompliance with the provisions of this  
62 chapter for filings required between January 1, 2010, and January 10, 2014, the

63 commission shall be authorized to waive late fees, fines, and civil penalties incurred by  
64 candidates for public office for those offices defined in subparagraphs (F) and (G) of  
65 paragraph (22) of Code Section 21-5-3 regarding the late, incomplete, or nonfiling of  
66 campaign disclosure reports and personal financial disclosure reports.

67 (b) For candidates who paid late fees, fines, or civil penalties between January 1, 2014,  
68 and the effective date of this Code section based upon alleged noncompliance with the  
69 provisions of this chapter for filings required between January 1, 2010, and January 10,  
70 2014, such candidates may make a written request to the commission for a waiver under  
71 this Code section, and, if granted, the commission shall refund such late fees, fines, and  
72 civil penalties to the candidate and shall expunge all of the alleged violations which were  
73 the basis of such late fees, fines, or civil penalties from the candidate's records.

74 (c) With regard to filings which were required under this chapter during the period  
75 between January 1, 2010, and January 10, 2014, there shall be a rebuttable presumption  
76 that all candidates for a public office for those offices defined in subparagraphs (F) and (G)  
77 of paragraph (22) of Code Section 21-5-3 timely filed or attempted to file the required  
78 reports but were unable to do so as a result of the problems with the commission's  
79 computer system during such time period. Such rebuttable presumption may be overcome  
80 by proof that such candidate knowingly and willfully refused to file the required report  
81 during such period.

82 (d) The commission shall approve or deny each request for waiver within 60 days after  
83 receipt of the request by the commission. If such request for a waiver is denied, the  
84 candidate may, within 30 days following the candidate's receipt of notice of the denial,  
85 demand a hearing on such request for a waiver before the Office of State Administrative  
86 Hearings."

87 **SECTION 3.**

88 This Act shall become effective upon its approval by the Governor or upon its becoming law  
89 without such approval.

90 **SECTION 4.**

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