

Senate Bill 127

By: Senators Jeffares of the 17th, Harbison of the 15th, Harper of the 7th, Williams of the 19th, Stone of the 23rd and others

AS PASSED SENATE

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 automatic repeal;
 5 to provide for related matters; to provide an effective date; to repeal conflicting laws; and for
 6 other purposes.

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

8 **SECTION 1.**

9 The General Assembly finds that:

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

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

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

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

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

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

57 **SECTION 2.**

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

60 "21-5-7.2.

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

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

68 (b) For candidates who paid late fees, fines, or civil penalties between January 1, 2014,
69 and the effective date of this Code section based upon alleged noncompliance with the
70 provisions of this chapter for filings required between January 1, 2010, and January 10,
71 2014, such candidates may make a written request to the commission for a waiver under
72 division (b)(14)(C)(i) of Code Section 21-5-6, and, if granted, the commission shall refund
73 such late fees, fines, and civil penalties to the candidate subject to appropriations for such
74 purpose.

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

83 (d) The commission shall approve or deny each request for waiver or commence further
84 proceedings under Code Section 21-5-7 within 12 months after receipt of the request by the
85 commission. If such request for a waiver is denied, the candidate may, within 30 days
86 following the candidate's receipt of notice of the denial, demand a hearing on such request
87 for a waiver before the commission as provided by division (b)(14)(C)(i) of Code
88 Section 21-5-6.

89 (e) In the event that the commission grants a waiver under this Code section and within
90 two years following the effective date of this Code section discovers evidence that the
91 person to whom such waiver was granted was guilty of knowingly and willfully refusing
92 to file the report or reports for which such waiver was granted, the commission may revoke
93 such waiver, reimpose all such late fees, fines, and penalties, and take such further actions
94 as the commission is authorized to do as if such waiver had never been granted.

95 (f) If the commission grants a waiver under this Code section and, at the end of the
96 two-year period following the effective date of this Code section, the commission has taken
97 no further action with regard to such waiver, then the commission shall expunge from the
98 commission's records all of the alleged violations which were the basis for such late fees,
99 fines, and penalties associated with such waiver for such person for whom such waiver was
100 granted.

101 (g) This Code section shall be repealed by operation of law on January 31, 2019."

102 **SECTION 3.**

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

105 **SECTION 4.**

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