

Senate Bill 309 - Prefile

By: Senator McKoon of the 29th

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 primaries and elections generally, so as to provide for the time for opening and closing of the
3 polls; to provide that special primaries shall be conducted with special elections to fill
4 vacancies in partisan offices; to provide for the filling of vacancies in certain offices; to
5 amend Chapter 5 of Title 45 of the Official Code of Georgia Annotated, relating to vacation
6 of office, so as to provide for the filling of vacancies in certain offices; to provide for related
7 matters; to provide an effective date; to repeal 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 primaries and
11 elections generally, is amended by revising Code Section 21-2-403, relating to time for
12 opening and closing of polls, as follows:

13 "21-2-403.

14 At all primaries and elections the polls shall be opened at 7:00 A.M. eastern standard time
15 or eastern daylight time, whichever is applicable, and shall remain open continuously until
16 7:00 P.M. eastern standard time or eastern daylight time, whichever is applicable, at which
17 time they shall be closed; ~~provided, however, that, in all cities having a population of~~
18 ~~300,000 or more according to the United States decennial census of 1970 or any future~~
19 ~~such census, the polls shall remain open continuously until 8:00 P.M. eastern standard time~~
20 ~~or eastern daylight time, whichever is applicable, during the cities' general elections, at~~
21 ~~which time they shall be closed and provided, further, that, in a special election held to fill~~
22 ~~a vacancy in an office in which the district represented by such office lies wholly within~~
23 ~~the boundaries of a city, the polls shall close at the same time as for a municipal general~~
24 ~~election in such city."~~

25 **SECTION 2.**

26 Said chapter is further amended by revising Code Section 21-2-504, relating to special
27 primary or election upon failure to nominate or elect or upon death, withdrawal, or failure
28 of officer-elect to qualify, as follows:

29 "21-2-504.

30 (a) Whenever any primary or election shall fail to fill a particular nomination or office and
31 such failure cannot be cured by a run-off primary or election, whenever any person elected
32 to public office shall die or withdraw prior to taking office, or whenever any person elected
33 to public office shall fail to take that office validly, the authority with whom the candidates
34 for such nomination or office file notice of candidacy shall call a special primary ~~or~~ and
35 special election to fill such position. ~~If a special primary will not be held and unless~~
36 ~~otherwise provided by law, the call of a~~ The call of the special primary and special election
37 shall be made within 45 days after the occurrence of the vacancy.

38 (b) Whenever any person elected to municipal public office shall, after taking office, die,
39 withdraw, or for any other reason create a vacancy in his or her office and the municipal
40 charter fails to provide a method for the filling of such vacancy, the governing authority
41 shall thereupon call a special election to fill such vacancy."

42 **SECTION 3.**

43 Said chapter is further amended by revising Code Section 21-2-540, relating to the conduct
44 of special elections generally, as follows:

45 "21-2-540.

46 (a)(1) Every special election shall be held and conducted in all respects in accordance
47 with the provisions of this chapter relating to general elections; and the provisions of this
48 chapter relating to general elections shall apply thereto insofar as practicable and as not
49 inconsistent with any other provisions of this chapter. All special elections held at the
50 time of a general election, as provided by Code Section 21-2-541, shall be conducted by
51 the poll officers by the use of the same equipment and facilities, ~~so far~~ insofar as
52 practicable, as are used for such general election.

53 (2) Except as otherwise provided in Code Section 21-2-543.1, to fill a vacancy in a
54 partisan office, there shall be a special primary followed by a special election.

55 (b) At least 29 days shall intervene between the call of a special primary and the holding
56 of same, and at least 29 days shall intervene between the call of a special election and the
57 holding of same. The period during which candidates may qualify to run in a special
58 primary or a special election shall remain open for a minimum of two and one-half days.
59 Special elections and special primaries which are to be held in conjunction with ~~the~~ a
60 presidential preference primary, a state-wide general primary, or a state-wide general

61 election shall be called at least 90 days prior to the date of such presidential preference
 62 primary, state-wide general primary, or state-wide general election; provided, however, that
 63 this requirement shall not apply to special elections held on the same date as such
 64 presidential preference primary, state-wide general primary, or state-wide general election
 65 but conducted completely separate and apart from such state-wide general primary or
 66 state-wide general election using different ballots or voting equipment, facilities, poll
 67 workers, and paperwork. ~~Notwithstanding any provision of this subsection to the contrary,~~
 68 ~~special elections which are to be held in conjunction with the state-wide general primary~~
 69 ~~or state-wide general election in 2014 shall be called at least 60 days prior to the date of~~
 70 ~~such state-wide general primary or state-wide general election.~~

71 (c)(1) Notwithstanding any other provision of law to the contrary, a special primary or
 72 special election to fill a vacancy in a county or municipal office shall be held only on one
 73 of the following dates which is at least 29 days after the date of the call for the special
 74 election:

75 (A) In odd-numbered years, any such special election shall only be held on:

- 76 (i) The third Tuesday in March;
- 77 (ii) The third Tuesday in June;
- 78 (iii) The third Tuesday in September; or
- 79 (iv) The Tuesday after the first Monday in November; and

80 (B) In even-numbered years, any such special election shall only be held on:

- 81 (i) The third Tuesday in March; provided, however, that in the event that a special
 82 election is to be held under this provision in a year in which a presidential preference
 83 primary is to be held, then any such special election shall be held on the date of and
 84 in conjunction with the presidential preference primary;
- 85 (ii) The date of the general primary; or
- 86 (iii) The Tuesday after the first Monday in November;

87 provided, however, that, in the event that a special election or special primary to fill a
 88 federal or state office on a date other than the dates provided in this paragraph has been
 89 scheduled and it is possible to hold a special election or special primary to fill a vacancy
 90 in a county, municipal, or school board office in conjunction with such special election
 91 or special primary to fill a federal or state office, the special election or special primary
 92 to fill such county, municipal, or school board office may be held on the date of and in
 93 conjunction with such special election or special primary to fill such federal or state
 94 office provided all other provisions of law regarding such elections are met.

95 (2) Notwithstanding any other provision of law to the contrary, a special election to
 96 present a question to the voters shall be held only on one of the following dates which is
 97 at least 29 days after the date of the call for the special election:

- 98 (A) In odd-numbered years, any such special election shall only be held on the third
 99 Tuesday in March or on the Tuesday after the first Monday in November; and
- 100 (B) In even-numbered years, any such special election shall only be held on:
- 101 (i) The date of and in conjunction with the presidential preference primary if one is
 102 held that year;
- 103 (ii) The date of the general primary; or
- 104 (iii) The Tuesday after the first Monday in November.
- 105 (3) The provisions of this subsection shall not apply to:
- 106 (A) Special elections held pursuant to Chapter 4 of this title, the 'Recall Act of 1989,'
 107 to recall a public officer or to fill a vacancy in a public office caused by a recall
 108 election; and
- 109 (B) Special primaries or special elections to fill vacancies in federal or state public
 110 offices.
- 111 (d) Except as otherwise provided by this chapter, the superintendent of each county or
 112 municipality shall publish the call of the special election or special primary.
- 113 ~~(e) Candidates in special elections for partisan offices shall be listed alphabetically on the~~
 114 ~~ballot and may choose to designate on the ballot their party affiliation. The party affiliation~~
 115 ~~selected by a candidate shall not be changed following the close of qualifying."~~

116

SECTION 4.

117 Said chapter is further amended by revising Code Section 21-2-541, relating to the holding
 118 of special primary or election at time of general primary or election and inclusion of
 119 candidates and questions in special primary or election on ballot, as follows:

120 "21-2-541.

- 121 (a) A special primary or special election may be held at the time of a general primary or
 122 general election.
- 123 (b) If the times specified for the closing of the registration list for a special primary or
 124 special election are the same as those for a general primary or general election, the
 125 candidates and questions in such special primary or special election shall be included on
 126 the ballot for such general primary or general election. In such an instance, the name of
 127 the office and the candidates in such special primary or special election shall appear on the
 128 ballot in the position where such names would ordinarily appear if such contest was a
 129 general primary or general election."

130 **SECTION 5.**

131 Said chapter is further amended by revising Code Section 21-2-542, relating to special
 132 election for United States senator vacancy and temporary appointment by Governor, as
 133 follows:

134 "21-2-542.

135 Whenever a vacancy shall occur in the representation of this state in the Senate of the
 136 United States and there are more than 12 months remaining in the unexpired term of office,
 137 such vacancy shall be filled for the unexpired term by the vote of the electors of the state
 138 at a special primary to be held at the time of the next general primary and a special election
 139 to be held at the time of the next November state-wide general election; occurring at least
 140 40 days after the occurrence of such vacancy; and it. It shall be the duty of the Governor
 141 to issue his or her proclamation for such special primary and special election. Until such
 142 time as the vacancy shall be filled by an election as provided in this Code section, the
 143 Governor may make a temporary appointment to fill such vacancy. If there are 12 months
 144 or less remaining in the unexpired term of office, no special primary and special election
 145 shall be held and the Governor shall make an appointment to fill the unexpired term of
 146 office."

147 **SECTION 6.**

148 Said chapter is further amended by revising Code Section 21-2-543, relating to special
 149 election for United States congressional representative vacancy, as follows:

150 "21-2-543.

151 Whenever a vacancy shall occur or exist in the office of Representative in the United States
 152 Congress from this state the Governor shall issue, within ten days after the occurrence of
 153 such vacancy, a writ of election to the Secretary of State for a special primary and special
 154 election to fill such vacancy, which special primary and special election shall be held on
 155 the ~~date~~ dates named in the writ, ~~which shall not be less than 30 days after its issuance.~~
 156 Upon receiving the writ of election from the Governor, the Secretary of State shall then
 157 transmit the writ of election to the superintendent of each county involved and shall publish
 158 the call of the special primary and special election."

159 **SECTION 7.**

160 Said chapter is further amended by revising Code Section 21-2-544, relating to special
 161 election for General Assembly vacancy, as follows:

162 "21-2-544.

163 Whenever a vacancy shall occur or exist in either house of the General Assembly, such
 164 vacancy shall be filled as follows:

165 (1) If such vacancy shall occur during a session of the General Assembly there are more
 166 than 12 months remaining in the unexpired term of office, the Governor shall issue,
 167 within ten days after the occurrence of such vacancy, a writ of election to the Secretary
 168 of State for a special primary and special election to fill such vacancy which shall be held
 169 on the ~~date~~ dates named in the writ, which shall not be fewer than 30 ~~nor more than 60~~
 170 days after its issuance;

171 ~~(2) Except as provided in paragraph (4) of this Code section, if such vacancy shall occur~~
 172 ~~after the conclusion of the regular session which is held during the first year of the term~~
 173 ~~of office of members of the General Assembly, but more than 60 days prior to the~~
 174 ~~Tuesday following the first Monday in November of the first year of the term of office~~
 175 ~~of members of the General Assembly, the Governor may issue at any time but no later~~
 176 ~~than 60 days prior to the Tuesday following the first Monday in November of the first~~
 177 ~~year of the term of office of members of the General Assembly a writ of election to the~~
 178 ~~Secretary of State for a special election to fill such vacancy which shall be held not fewer~~
 179 ~~than 30 days after its issuance nor later than 60 days prior to the Tuesday following the~~
 180 ~~first Monday in November of the first year of the term of office of members of the~~
 181 ~~General Assembly;~~

182 ~~(3) If such vacancy shall occur after the conclusion of the regular session of the General~~
 183 ~~Assembly held during the first year of the term of office of members of the General~~
 184 ~~Assembly during the period beginning 60 days prior to the Tuesday following the first~~
 185 ~~Monday in November of such year and ending on the day prior to the beginning of the~~
 186 ~~regular session of the General Assembly held during the second year of the term of office~~
 187 ~~of members of the General Assembly, the Governor shall issue, within ten days after the~~
 188 ~~occurrence of such vacancy, a writ of election to the Secretary of State for a special~~
 189 ~~election to fill such vacancy which shall be held on the date named in the writ, which~~
 190 ~~shall not be fewer than 30 nor more than 60 days after its issuance;~~

191 ~~(4) If such vacancy shall occur following the election of a member of the General~~
 192 ~~Assembly but prior to such member taking office, such vacancy shall be filled in~~
 193 ~~accordance with Code Section 21-2-504, but such election shall be called within ten days~~
 194 ~~of such vacancy and shall be held not fewer than 30 nor more than 60 days following the~~
 195 ~~date of such call;~~

196 ~~(5)(2) If there are 12 months or less remaining in the unexpired term of office, If such~~
 197 ~~vacancy shall occur following the conclusion of the regular session of the General~~
 198 ~~Assembly during the second year of the term of office of members of the General~~
 199 ~~Assembly, the issuance of a writ of election to fill such vacancy shall be in the discretion~~
 200 ~~of the Governor except as otherwise provided in paragraph (6) (3) of this Code section~~
 201 ~~and if the Governor chooses to issue such writ of election to fill such vacancy, such~~

202 special primary and special election shall be held on the ~~date~~ dates named in the writ,
 203 which shall not be fewer than 30 ~~nor more than 60~~ days after its issuance; or

204 ~~(6)(3)(A)~~ If such vacancy shall exist at a time when the members of the General
 205 Assembly shall be required to meet in special session and there are 12 months or less
 206 remaining in the unexpired term of office, the Governor shall issue, within two days
 207 after the calling of an extraordinary session of the General Assembly during the
 208 existence of such vacancy, a writ of election to the Secretary of State for a special
 209 primary and special election to fill such vacancy which shall be held on the ~~date~~ dates
 210 named in the writ, which shall not be fewer than 30 ~~nor more than 60~~ days after its
 211 issuance, provided that, in the reasonable judgment of the Governor, sufficient time
 212 exists to conduct such special primary and special election and any runoffs therefrom
 213 prior to the conclusion of the extraordinary session; or

214 (B) If such vacancy shall occur after the issuance by the Governor of a call for an
 215 extraordinary session of the General Assembly, but prior to the conclusion of such
 216 extraordinary session and there are 12 months or less remaining in the unexpired term
 217 of office, the Governor shall issue, within five days after the occurrence of such
 218 vacancy, a writ of election to the Secretary of State for a special primary and special
 219 election to fill such vacancy which shall be held on the ~~date~~ dates named in the writ,
 220 which shall not be fewer than 30 ~~nor more than 60~~ days after its issuance, provided that,
 221 in the reasonable judgment of the Governor, sufficient time exists to conduct such
 222 special primary and special election and any runoffs therefrom prior to the conclusion
 223 of the extraordinary session.

224 Upon receiving the writ of election from the Governor, the Secretary of State shall then
 225 transmit the writ of election to the superintendent of each county involved and shall publish
 226 the call of the special primary and special election."

227 **SECTION 8.**

228 Chapter 5 of Title 45 of the Official Code of Georgia Annotated, relating to vacation of
 229 office, is amended by revising Code Section 45-5-3, relating to election or appointment of
 230 successor to fill unexpired terms, as follows:

231 "45-5-3.

232 (a) In those instances where the law applicable to an elective public office does not
 233 provide for filling a vacancy in such office and the Governor fills such vacancy pursuant
 234 to the authority of Article V, Section II, Paragraph VIII, subparagraph (a) of the
 235 Constitution and in those instances where the Governor fills a vacancy in the office of
 236 district attorney pursuant to Article VI, Section VIII, Paragraph I, subparagraph (a) of the
 237 Constitution, the vacancy shall be filled as follows:

238 (1) If the vacancy occurs during the final 27 months of a term of office, the Governor
 239 shall appoint a person to fill such vacancy for the remainder of the unexpired term of
 240 office; or

241 (2) If the vacancy occurs at any time prior to the time specified in paragraph (1) of this
 242 subsection, the Governor shall appoint a person to fill such vacancy until such vacancy
 243 is filled for the unexpired term of office at a special primary and special election provided
 244 for in subsection (b) of this Code section.

245 (b) When a special primary and special election ~~is~~ are required to fill a vacancy for the
 246 unexpired term of office as provided by paragraph (2) of subsection (a) of this Code
 247 section, such special primary shall be held on the same date as the general primary which
 248 is first held following the date of the vacancy and in conjunction with such general primary
 249 and such special election shall be held on the same date as the general election which is
 250 first held following the date of the vacancy and in conjunction with such general election.

251 (c) It shall be the duty of the appropriate state or local election officials to call and conduct
 252 the special primaries and special elections required by subsection (b) of this Code section
 253 in accordance with the applicable provisions of Chapter 2 of Title 21, known as the
 254 'Georgia Election Code.' Any person elected to fill a vacancy pursuant to subsection (b)
 255 of this Code section shall possess the qualifications to seek and hold such office provided
 256 by law applicable to the office wherein the vacancy occurred.

257 (d) The provisions of this Code section shall not apply to a vacancy which occurs in any
 258 elective office of a municipality of this state."

259 **SECTION 9.**

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

262 **SECTION 10.**

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