

The House Committee on Governmental Affairs offers the following substitute to SB 322:

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 manner of handling the death of
3 a candidate prior to a nonpartisan election; to provide that no candidate shall take or be sworn
4 into any elected public office unless such candidate has received a majority of the votes cast
5 for such office except as otherwise provided by law; to provide for related matters; to provide
6 for an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and
10 elections generally, is amended in Code Section 21-2-134, relating to withdrawal, death, or
11 disqualification of candidate for office, return of qualifying fee, and nomination certificate,
12 by adding a new subsection to read as follows:

13 "(g) If a candidate on the ballot in a nonpartisan election dies prior to such election, such
14 candidate's name shall remain on the ballot and all votes cast for such candidate shall be
15 counted. If the deceased candidate receives the requisite number of votes to be elected,
16 such contest shall be handled as a failure to fill the office under Code Section 21-2-504.
17 If the deceased candidate receives enough votes to be in a runoff election, the runoff
18 election shall be conducted as provided in Code Section 21-2-501 and the candidates in
19 such runoff shall be determined in accordance with paragraph (7) of subsection (a) of Code
20 Section 21-2-501."

21 **SECTION 2.**

22 Said chapter is further amended by revising Code Section 21-2-285.1, relating to form of
23 ballot, runoff election, and declaration of prevailing candidate in nonpartisan elections, as
24 follows:

25 "21-2-285.1.
 26 The names of all candidates for offices which the General Assembly has by general law or
 27 local Act provided for election in a nonpartisan election shall be printed on each official
 28 primary ballot; and insofar as practicable such offices to be filled in the nonpartisan
 29 election shall be separated from the names of candidates for party nomination to other
 30 offices by being listed last on each ballot, with the top of that portion of each official
 31 primary ballot relating to the nonpartisan election to have printed in prominent type the
 32 words 'OFFICIAL NONPARTISAN ELECTION BALLOT.' In addition, there shall be a
 33 ballot that contains just the official nonpartisan election ballot available for electors who
 34 choose not to vote in a party primary. Directions that explain how to cast a vote, how to
 35 write in a candidate, and how to obtain a new ballot after the elector spoils his or her ballot
 36 shall appear immediately under the caption, as specified by rule or regulation of the State
 37 Election Board. Immediately under the directions, the name of each such nonpartisan
 38 candidate shall be arranged alphabetically by last name under the title of the office for
 39 which they are candidates and be printed thereunder. The incumbency of a candidate
 40 seeking election for the public office he or she then holds shall be indicated on the ballot.
 41 No party designation or affiliation shall appear beside the name of any candidate for
 42 nonpartisan office. An appropriate space shall also be placed on the ballot for the casting
 43 of write-in votes for such offices. In the event that no candidate in such nonpartisan
 44 election receives a majority of the total votes cast for such office, there shall be a
 45 nonpartisan election runoff between the candidates receiving the two highest numbers of
 46 votes; and the names of such candidates shall be placed on the official ballot at the general
 47 primary runoff in the same manner as prescribed in this Code section for the nonpartisan
 48 election and there shall be a separate official nonpartisan election runoff ballot for those
 49 electors who do not choose or are not eligible to vote in the general primary runoff. In the
 50 event that only nonpartisan candidates are to be placed on a run-off ballot, the form of the
 51 ballot shall be as prescribed by the Secretary of State or election superintendent in
 52 essentially the same format as prescribed for the nonpartisan election. ~~The~~ Except as
 53 provided in subsection (g) of Code Section 21-2-134, the candidate having a majority of
 54 the votes cast in the nonpartisan election or the candidate receiving the highest number of
 55 votes cast in the nonpartisan election runoff shall be declared duly elected to such office."

56 **SECTION 3.**

57 Said chapter is further amended by revising subsection (d) of Code Section 21-2-437, relating
 58 to procedure as to count and return of votes generally and void ballots, as follows:

59 "(d) Any ballot marked so as to identify the voter shall be void and not counted, except a
 60 ballot cast by a challenged elector whose name appears on the electors list; such challenged

61 vote shall be counted as prima facie valid but may be voided in the event of an election
 62 contest. Any ballot marked by anything but pen or pencil shall be void and not counted.
 63 Any erasure, mutilation, or defect in the vote for any candidate shall render void the vote
 64 for such candidate but shall not invalidate the votes cast on the remainder of the ballot, if
 65 otherwise properly marked. If an elector shall mark his or her ballot for more persons for
 66 any nomination or office than there are candidates to be voted for such nomination or
 67 office, or if, for any reason, it may be impossible to determine his or her choice for any
 68 nomination or office, his or her ballot shall not be counted for such nomination or office;
 69 but the ballot shall be counted for all nominations or offices for which it is properly
 70 marked. Unmarked ballots or ballots improperly or defectively marked so that the whole
 71 ballot is void shall be set aside and shall be preserved with other ballots. In primaries,
 72 votes cast for candidates who have died, withdrawn, or been disqualified shall be void and
 73 shall not be counted. ~~In~~ Except as provided in subsection (g) of Code Section 21-2-134
 74 regarding nonpartisan elections, in elections, votes for candidates who have died or been
 75 disqualified shall be void and shall not be counted."

76 **SECTION 4.**

77 Said chapter is further amended by revising subsection (a) of Code Section 21-2-438, relating
 78 to ballots identifying voter, not marked, or improperly marked declared void, as follows:

79 "(a) Any ballot marked so as to identify the voter shall be void and not counted, except a
 80 ballot cast by a challenged elector whose name appears on the electors list; such challenged
 81 vote shall be counted as prima facie valid but may be voided in the event of an election
 82 contest. Any ballot marked by anything but pen or pencil shall be void and not counted.
 83 Any erasure, mutilation, or defect in the vote for any candidate shall render void the vote
 84 for such candidate but shall not invalidate the votes cast on the remainder of the ballot, if
 85 otherwise properly marked. If an elector shall mark his or her ballot for more persons for
 86 any nomination or office than there are candidates to be voted for such nomination or
 87 office, or if, for any reason, it may be impossible to determine his or her choice for any
 88 nomination or office, his or her ballot shall not be counted for such nomination or office;
 89 but the ballot shall be counted for all nominations or offices for which it is properly
 90 marked. Ballots not marked or improperly or defectively marked so that the whole ballot
 91 is void; shall be set aside and shall be preserved with the other ballots. In primaries, votes
 92 cast for candidates who have died, withdrawn, or been disqualified shall be void and shall
 93 not be counted. ~~In~~ Except as provided in subsection (g) of Code Section 21-2-134
 94 regarding nonpartisan elections, in elections, votes for candidates who have died or been
 95 disqualified shall be void and shall not be counted."

96

SECTION 5.

97 Said chapter is further amended by revising paragraph (1) of subsection (a) of Code
98 Section 21-2-501, relating to number of votes required for election, as follows:

99 "(a)(1) Except as otherwise provided in this Code section, no candidate shall be
100 nominated for public office in any primary or special primary or elected to public office
101 in any election or special election or shall take or be sworn into such elected public office
102 unless such candidate shall have received a majority of the votes cast to fill such
103 nomination or public office. In instances where no candidate receives a majority of the
104 votes cast, a run-off primary, special primary runoff, run-off election, or special election
105 runoff between the candidates receiving the two highest numbers of votes shall be held.
106 Unless such date is postponed by a court order, such run-off primary, special primary
107 runoff, run-off election, or special election runoff shall be held as provided in this
108 subsection."

109

SECTION 6.

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

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SECTION 7.

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