

House Bill 701

By: Representative Fleming of the 121<sup>st</sup>

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 revise a definition; to provide additional powers  
3 of the State Election Board regarding suspending superintendents; to provide for the  
4 appointment of temporary and permanent replacement superintendents; to provide for  
5 procedures; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and  
9 primaries generally, is amended by revising paragraph (35) of Code Section 21-2-2, relating  
10 to definitions, as follows:

11 "(35) 'Superintendent' means:

12 (A) Either the judge of the probate court of a county or the county board of elections,  
13 the county board of elections and registration, the joint city-county board of elections,  
14 or the joint city-county board of elections and registration, if a county has such;

15 (B) In the case of a municipal primary, the municipal executive committee of the  
 16 political party holding the primary within a municipality or its agent or, if none, the  
 17 county executive committee of the political party or its agent;

18 (C) In the case of a nonpartisan municipal primary, the person appointed by the proper  
 19 municipal executive committee; ~~and~~

20 (D) In the case of a municipal election, the person appointed by the governing  
 21 authority pursuant to the authority granted in Code Section 21-2-70; and

22 (E) In the case of the State Election Board exercising its powers under subsection (f)  
 23 of Code Section 21-2-33.1, the individual appointed by the State Election Board to  
 24 exercise the power of election superintendent."

25 **SECTION 2.**

26 Said chapter is further amended in Code Section 21-2-33.1, relating to enforcement of  
 27 chapter, by adding a new subsection to read as follows:

28 "(f) After following the procedures set forth in Code Section 21-2-33.2, the State Election  
 29 Board may suspend county or municipal superintendents and appoint an individual to serve  
 30 as the temporary superintendent in a jurisdiction. Such individual shall exercise all the  
 31 powers and duties of a superintendent as provided by law, including the authority to make  
 32 all personnel decisions related to any employees of the jurisdiction who assist with carrying  
 33 out the duties of the superintendent, including, but not limited to, the director of elections,  
 34 the election supervisor, and all poll officers."

35 **SECTION 3.**

36 Such chapter is further amended in Subpart 1 of Part 1 of Article 2, relating to the State  
 37 Election Board, by adding a new Code section to read as follows:

38 "21-2-33.2.

39 (a) The following elected officials may petition the State Election Board, through the  
40 Secretary of State, for extraordinary relief pursuant to this Code section:

41 (1) Any county commissioner;

42 (2) For counties represented by more than three members of the Georgia House of  
43 Representatives and more than three members of the Georgia State Senate, at least two  
44 members of the Georgia House of Representatives and two members of the Georgia State  
45 Senate who represent the county; and

46 (3) For counties represented by fewer than four members of the Georgia House of  
47 Representatives and four members of the Georgia State Senate, at least one member of  
48 the Georgia House of Representatives and one member of the Georgia State Senate who  
49 represent the county.

50 (b) In addition to the authority provided in Code Section 21-2-33.1 and notwithstanding  
51 any provisions of law to the contrary, upon receipt of a petition filed pursuant to  
52 subsection (a) of this Code section, the State Election Board may suspend a county or  
53 municipal superintendent pursuant to this Code section if at least three members of the  
54 board find, after notice and hearing, that:

55 (1) By a preponderance of the evidence, a county or municipal superintendent has  
56 committed at least three violations of this title or of State Election Board rules and  
57 regulations, in the last two general election cycles; and the county or municipal  
58 superintendent has not sufficiently remedied the violations; or

59 (2) By clear and convincing evidence, the county or municipal superintendent has, for  
60 at least two elections within a two-year period, demonstrated nonfeasance, malfeasance,  
61 or gross negligence in the administration of the elections.

62 (c) The hearing authorized by this Code section shall take place not less than 30 days nor  
63 more than 90 days after the Secretary of State receives the petition. Service of the petition

64 shall be made by hand delivery or by statutory overnight delivery to the Secretary of State's  
65 office.

66 (d) A majority of the members of a board of elections, board of elections and registration,  
67 or county commission; a probate judge who serves as election superintendent, or, for a sole  
68 commissioner form of government, a sole commissioner may petition the Secretary of State  
69 to continue any hearing scheduled pursuant to this Code section. Upon a showing of good  
70 cause, the State Election Board may in its sound discretion continue any such hearing.  
71 Notwithstanding any other provision of law, deliberations held on such petition by the State  
72 Election Board shall not be open to the public; provided, however, that testimony shall be  
73 taken in an open meeting and a vote on the recommendation shall be taken in an open  
74 meeting following the hearing or at the next regularly scheduled meeting.

75 (e)(1) If the State Election Board makes a finding in accordance with subsection (b) of  
76 this Code section, it may suspend the superintendent with pay and appoint an individual  
77 to serve as the temporary superintendent. The temporary superintendent who is  
78 appointed shall be otherwise qualified to serve or meet the necessary qualifications within  
79 three months of appointment.

80 (2) Any superintendent suspended under this Code section may petition the Secretary of  
81 State for reinstatement no earlier than 30 days following suspension and no later than 60  
82 days following suspension. In the event that a suspended superintendent does not petition  
83 for reinstatement within the allotted time period, his or her suspension shall be converted  
84 into permanent removal, and the temporary superintendent shall become a permanent  
85 superintendent subject to removal by the jurisdiction not less than nine months after his  
86 or her appointment.

87 (3) If, after the expiration of the nine-month period following the appointment, the  
88 jurisdiction removes the permanent superintendent, any provisions of local or general law  
89 governing appointment of the superintendent shall govern the appointment of the  
90 superintendent.

91 (4) If, at any time after the expiration of the nine-month period following the  
92 appointment, at least three members of the State Election Board find, after notice and  
93 hearing, that the jurisdiction no longer requires a superintendent appointed under this  
94 Code section, any provisions of local or general law governing appointment of the  
95 superintendent shall govern the appointment of the superintendent.

96 (f) Upon petition for reinstatement by a superintendent suspended pursuant to a finding  
97 under paragraph (1) of subsection (b) of this Code section, the State Election Board shall  
98 conduct a hearing for the purpose of receiving evidence relative to whether the  
99 superintendent's continued service as superintendent is more likely than not to improve the  
100 ability of the jurisdiction to conduct elections in a manner that complies with this chapter.  
101 The suspended superintendent shall be given at least 30 days' notice prior to such hearing  
102 and such hearing shall be held no later than 90 days after the petition is filed in accordance  
103 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that the  
104 State Election Board shall have the power to call witnesses and request documents on its  
105 own initiative. If the State Election Board denies the petition, it shall be deemed a final  
106 agency decision under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'  
107 and it may be appealed in a manner consistent with Code Section 50-13-19. The Attorney  
108 General or his or her designee shall represent the interests of the State Election Board in  
109 any such judicial review.

110 (g) A local government shall not expend any public funds for attorneys' fees or expenses  
111 of litigation relating to the proceedings initiated pursuant to this Code section except to the  
112 extent such fees and expenses are incurred prior to and through the recommendation of the  
113 State Election Board as provided in subsection (b) of this Code section; provided, however,  
114 that nothing in this subsection shall be construed to prohibit an insurance provider from  
115 covering attorneys' fees or expenses of litigation under an insurance policy. Any  
116 suspended superintendent who is reinstated by the State Election Board pursuant to this

117 Code section may be reimbursed by the local government for his or her reasonable  
118 attorneys' fees and related expenses incurred in pursuing such reinstatement.

119 (h) For purposes of this Code section, where a judge of probate court serves as the  
120 superintendent, the suspension authorized by this Code section shall apply only to the judge  
121 of probate court's duties as a superintendent and not as a judge of probate court.

122 (i) When the State Election Board exercises its authority under subsection (f) of Code  
123 Section 21-2-33.1, the jurisdiction involved shall not diminish or reduce the funds already  
124 budgeted or appropriated by the jurisdiction pursuant to Code Section 21-2-71 and shall  
125 pay any necessary and reasonable funds over that amount, as determined by the temporary  
126 superintendent, to faithfully carry out their obligations under Code Section 21-2-70."

127 **SECTION 4.**

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