

Senate Bill 212

By: Senators Burns of the 23rd, Gooch of the 51st, Anderson of the 24th, Summers of the 13th, Hickman of the 4th and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to
2 probate courts, and Title 21 of the Official Code of Georgia Annotated, relating to elections,
3 respectively, so as to end activities and duties of probate court judges relating to elections;
4 to provide for county boards of elections and registration in counties where the probate court
5 judge serves as the election superintendent; to provide for their powers and duties; to provide
6 for the composition of the boards and the selection, qualification, and terms of their
7 members; to provide for resignation, succession, and removal of members and for filling
8 vacancies; to provide for oaths and privileges; to provide for meetings and procedures; to
9 provide for election supervisors and the powers and duties of such election supervisors; to
10 provide for board employees and their compensation; to provide for expenditures of public
11 funds for certain purposes; to provide for compensation of the members of the boards and
12 election supervisors; to provide for offices and equipment; to provide for the boards'
13 performance of certain functions and duties for certain municipalities; to provide for related
14 matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

S. B. 212

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16

SECTION 1.

17 Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts,
 18 is amended in Code Section 15-9-30, relating to subject matter jurisdiction, powers and
 19 duties generally, copy of Official Code of Georgia Annotated furnished for each judge, and
 20 authority of probate court judges, by revising subsection (b) as follows:

21 "(b) In addition to the jurisdiction granted in subsection (a) of this Code section and unless
 22 otherwise provided by law, the probate courts shall have the power to carry out the
 23 following duties as assigned by specific laws:

24 (1) Perform county governmental administration duties;

25 ~~(2) Perform duties relating to elections;~~

26 ~~(3)~~ Fill vacancies in public offices by appointment;

27 ~~(4)~~(3) Administer oaths to public officers;

28 ~~(5)~~(4) Accept, file, approve, and record bonds of public officers;

29 ~~(6)~~(5) Register and permit certain enterprises;

30 ~~(7)~~(6) Issue marriage licenses;

31 ~~(8)~~(7) Hear traffic cases;

32 ~~(9)~~(8) Hear cases of violations of game and fish laws;

33 ~~(10)~~(9) Hold criminal commitment hearings; and

34 ~~(11)~~(10) Perform such other judicial and ministerial functions as may be provided by
 35 law."

36

SECTION 2.

37 Said chapter is further amended by revising Code Section 15-9-64, relating to supplement
 38 to minimum salaries, as follows:

39 "15-9-64.

40 ~~The amount of minimum salary provided in Code Section 15-9-63 for the judges of the~~
 41 ~~probate courts of any county presently on a salary who also hold and conduct elections or~~

42 ~~are responsible for conducting elections for members of the General Assembly under any~~
 43 ~~applicable general or local law of this state shall be increased by \$385.90 per month. The~~
 44 amount of the minimum salary provided in Code Section 15-9-63 for the judges of the
 45 probate courts on a salary who are responsible for traffic cases under any general or local
 46 law of this state shall also be increased by \$482.28 per month. A county governing
 47 authority shall not be required to pay the compensation provided by this Code section
 48 beyond the term for which such judge performs such services."

49

SECTION 3.

50 Title 21 of the Official Code of Georgia Annotated, relating to elections, is amended in Code
 51 Section 21-2-2, relating to definitions, by revising subparagraph (A) of paragraph (35) as
 52 follows:

53 ~~"(A) Either the judge of the probate court of a county or the county board of elections,~~
 54 the county board of elections and registration, the joint city-county board of elections,
 55 or the joint city-county board of elections and registration, if a county has such;"

56

SECTION 4.

57 Said title is further amended in Code Section 21-2-33.2, relating to extraordinary relief,
 58 hearings, suspension and reinstatement of superintendents, and litigation expenses, by
 59 repealing and reserving subsection (h) and by revising subsection (d) as follows:

60 "(d) A majority of the members of a board of elections, board of elections and registration,
 61 or county commission; ~~a probate judge who serves as election superintendent,~~ or, for a sole
 62 commissioner form of government, a sole commissioner may petition the Secretary of State
 63 to continue any hearing scheduled pursuant to this Code section. Upon a showing of good
 64 cause, the State Election Board may in its sound discretion continue any such hearing.
 65 Notwithstanding any other provision of law, deliberations held on such petition by the State
 66 Election Board shall not be open to the public; provided, however, that testimony shall be

67 taken in an open meeting and a vote on the recommendation shall be taken in an open
68 meeting following the hearing or at the next regularly scheduled meeting."

69 **SECTION 5.**

70 Said title is further amended by revising Code Section 21-2-40, relating to General Assembly
71 authorized to create board of elections and board of elections and registration in any county,
72 as follows:

73 "21-2-40.

74 (a) ~~The General Assembly may by local Act create a board of elections in any county of~~
75 ~~this state and empower the board with the powers and duties of the election superintendent~~
76 ~~relating to the conduct of primaries and elections. Such board shall consist of not fewer~~
77 ~~than three members. In any county in which the judge of the probate court serves as the~~
78 ~~election superintendent, the governing authority of such county shall and is directed to~~
79 ~~create a board of elections and registration pursuant to subsection (b) of this Code section~~
80 ~~no later than October 31, 2023. Each such board of elections and registration shall assume~~
81 ~~the duties of the county's election superintendent have the powers and duties of the election~~
82 ~~superintendent relating to the conduct of primaries and elections and shall have the powers~~
83 ~~and duties of a board of registrars relating to the registration of voters and absentee~~
84 ~~balloting procedures beginning on January 1, 2024.~~

85 (b)(1) ~~The General Assembly may by local Act create a board of elections and~~
86 ~~registration in any county of this state and empower the board with the powers and duties~~
87 ~~of the election superintendent relating to the conduct of primaries and elections and with~~
88 ~~the powers and duties of the board of registrars relating to the registration of voters and~~
89 ~~absentee-balloting procedures. Such board shall consist of not fewer than three members.~~
90 ~~Each board shall be composed of five members, each of whom shall be an elector and~~
91 ~~resident of the particular county, who shall be appointed in the following manner:~~

92 (A)(i) Two members shall be appointed by the county governing authority from a list
93 of at least five nominations provided by the chairperson of the county executive
94 committee of the political party whose candidate at the last preceding regular general
95 election held for the election of Governor received the largest number of votes in this
96 state for Governor; provided, however, that each of such nominations shall have been
97 ratified by a majority of the members of such executive committee voting at a
98 regularly scheduled meeting of such executive committee or a meeting duly called
99 and held for such purposes.

100 (ii) Regarding the initial terms of the two members appointed pursuant to division (i)
101 of this subparagraph, in the event such nominations are not ratified by a majority of
102 the members of such executive committee by July 31, 2024, then the members of the
103 executive committee may nominate such members by a two-thirds' majority of the
104 membership of such executive committee at a regularly scheduled meeting or at a
105 meeting duly called and held for such purposes. In the event the members of such
106 executive committee fail to nominate such members by September 30, then such
107 members shall be appointed in accordance with the provisions of paragraph (2) of
108 subsection (g) of this Code section no later than September 30, 2024.

109 (iii) After the terms of the initial members appointed pursuant to division (ii) of this
110 subparagraph, in the event such nominations are not ratified by a majority of the
111 members of such executive committee at least 60 days preceding the date on which
112 such members are to take office, then the members of the executive committee may
113 nominate such members by a two-thirds' majority of the membership of such
114 executive committee at a regularly scheduled meeting or at a meeting duly called and
115 held for such purposes. In the event the members of such executive committee fail
116 to nominate such members at least 30 days preceding the date on which such
117 members are to take office, then such members shall be appointed in accordance with
118 the provisions of paragraph (2) of subsection (g) of this Code section; and

119 (B)(i) Two members shall be appointed by the governing authority of the county
120 from a list of at least five nominations provided by the chairperson of the county
121 executive committee of the political party whose candidate at the last preceding
122 regular general election held for the election of Governor received the second largest
123 number of votes in this state for Governor; provided, however, that each of such
124 nominations shall have been ratified by a majority of the members of such executive
125 committee voting at a regularly scheduled meeting of such executive committee or a
126 meeting duly called and held for such purposes.

127 (ii) Regarding the initial terms of the two members appointed pursuant to division (i)
128 of this subparagraph, in the event such nominations are not ratified by a majority of
129 the members of such executive committee by July 31, 2024, then the members of the
130 executive committee may nominate such members by a two-thirds' majority of the
131 membership of such executive committee at a regularly scheduled meeting or at a
132 meeting duly called and held for such purposes. In the event the members of such
133 executive committee fail to nominate such members by September 30, then such
134 members shall be appointed in accordance with the provisions of paragraph (2) of
135 subsection (g) of this Code section no later than September 30, 2024.

136 (iii) After the terms of the initial members appointed pursuant to division (ii) of this
137 subparagraph, in the event such nominations are not ratified by a majority of the
138 members of such executive committee at least 60 days preceding the date on which
139 such members are to take office, then the members of such executive committee may
140 nominate such members by a two-thirds' majority of the membership of such
141 executive committee at a regularly scheduled meeting or at a meeting duly called and
142 held for such purposes. In the event the members of such executive committee fail
143 to nominate such members at least 30 days preceding the date on which such
144 members are to take office, then such members shall be appointed in accordance with
145 the provisions of paragraph (2) of subsection (g) of this Code section; and

146 (2) One member shall be appointed by the probate court judge of the county. The initial
147 appointed fifth member shall be appointed not later than October 31, 2023. Any
148 successor to such fifth member shall be appointed within 30 days of the party appointed
149 members taking office. The fifth member shall be deemed to be a member at large and
150 shall be the chairperson of each board. Any appointment made under the provisions of
151 this paragraph shall also be entered upon the minutes of the county governing authority.
152 The appointment of the member at large shall not be governed by the provisions of
153 paragraph (2) of subsection (g) of this Code section.

154 (c) Each member of each board shall serve for a term of two years and until a successor
155 is appointed and qualified, except in the event of resignation or removal as provided for in
156 subsections (d) and (e) of this Code section.

157 (d) Each member shall be eligible to succeed himself or herself, provided that a member
158 cannot serve more than four consecutive terms on each board. Each member shall have the
159 right to resign at any time by giving written notice of resignation to the governing authority
160 of the county.

161 (e) Each member shall be subject to removal from each board at any time, for cause after
162 notice and hearing, in the same manner and by the same authority as provided for removal
163 of registrars.

164 (f) The governing authority of the county shall file with the clerk of the superior court of
165 the county an affidavit which states the name and residential address of the person
166 appointed and certifies that such member has been duly appointed as provided in this Code
167 section. The affidavit for the member who has been appointed as chairperson of each
168 board shall also specify that member's position as chairperson. The clerk of the superior
169 court shall record each such certification on the minutes of the court and shall certify the
170 name of each such member to the Secretary of State and provide for the issuance of
171 appropriate commissions to the members and chairperson within the same time and in the
172 same manner as provided by law for registrars.

173 (g)(1) In the event that a vacancy occurs in the office of any member of each board by
174 removal, death, resignation, or otherwise, except by expiration of term, the respective
175 appointing authority shall appoint a successor for the remainder of the unexpired term.
176 The clerk of the superior court shall be notified of interim appointments and record and
177 certify such appointments in the same manner as the regular appointment of members.

178 (2) If any nominating authority does not, in conformity with this Code section, certify
179 nominations to each board within 30 days after the beginning of a term of office or within
180 30 days after the creation of a vacancy in that office, then the judge of the probate court
181 of the county shall immediately fill that vacancy by making the appointment thereto and
182 shall certify it as provided in subsection (f) of this Code section.

183 (h) Before entering upon his or her duties, each member of each board shall take
184 substantially the same oath as required by law for registrars. Each member of each board
185 shall have the same privileges from arrest as registrars.

186 (i) On January 1, 2024, each previous election superintendent of the county and each board
187 of registrars of the county shall be relieved of all powers and duties to which each board
188 succeeds by the provisions of this Code section; and such election superintendent and board
189 of registrars shall deliver thereafter to the chairperson of each board, upon his or her
190 written request, the custody of all equipment, supplies, materials, books, papers, records,
191 and facilities of every kind pertaining to such powers and duties.

192 (j)(1) Each board shall be authorized to organize itself, elect its officers, determine its
193 procedural rules and regulations, adopt bylaws, specify the functions and duties of its
194 employees, and otherwise take such action as is appropriate for the management of the
195 affairs committed to its supervision; provided, however, that no such action shall conflict
196 with state law.

197 (2) Action and decision by each board shall be by a majority of the members of each
198 board.

199 (k)(1) Each board shall fix and establish, by appropriate resolution entered on its
200 minutes, directives governing the execution of matters within its jurisdiction. Each board
201 shall hold regular monthly meetings at a time and place to be fixed by resolution of each
202 board. All meetings shall comply with the open meetings laws and open records laws of
203 the State of Georgia.

204 (2) Each board shall maintain a written record of policy decisions that shall be amended
205 to include additions or deletions. Such written record shall be made available for the
206 public to review.

207 (l)(1) Each board shall be responsible for the selection and appointment of an
208 administrative director, to be known as the election supervisor, to administer and
209 supervise conduct of elections, primaries, and registration of electors for the county. The
210 election supervisor shall serve at the pleasure of each board. Each board shall act within
211 60 days of its members taking office under this Code section to retain or appoint an
212 election supervisor who shall be hired by each board from a job description drawn by said
213 board.

214 (2) In the event that each board fails to appoint or retain an election supervisor to fill a
215 vacancy within the time specified in paragraph (1) of this subsection, an acting election
216 supervisor who shall temporarily fill such vacancy shall be appointed by the governing
217 authority of the county to serve until each board fills the vacancy.

218 (m) Each board shall be authorized to employ such full-time and part-time employees,
219 including a full-time chief clerk, as each board shall deem necessary. The governing
220 authority of the county shall have the right to approve the hiring of any such employee.

221 (n) With the consent of the governing authority of the county, each board of elections and
222 registration shall be authorized to expend public funds for the purpose of distributing
223 sample ballots, voter information booklets, and other material designed to inform and
224 adequately instruct the electors of the county with regard to elections. No material
225 distributed by each board shall contain or express, in any manner or form, any commentary

226 or expression of opinion or request for support with respect to any political issue or matter
 227 of political concern.

228 (o) Compensation for the members of each board, employees of each board, and the
 229 election supervisor shall be fixed by each board with the approval of the governing
 230 authority of the county. Such compensation shall be paid from county funds.

231 (p) The governing authority of the county shall provide each board and the election
 232 supervisor with proper and suitable offices and equipment.

233 (q) Each board is authorized to perform for any municipality located wholly or partially
 234 within the county any functions and duties which election superintendents and boards of
 235 registrars are authorized by general law to perform on behalf of municipalities under such
 236 conditions as provided by general law."

237

SECTION 6.

238 Said title is further amended in Code Section 21-2-70, relating to powers and duties of
 239 election superintendents, by revising paragraph (15) as follows:

240 ~~"(15)(A) In the case of a judge of the probate court serving as the election~~
 241 ~~superintendent, such person shall take an oath in the following form upon assuming the~~
 242 ~~duties of election superintendent which shall apply to all primaries and elections~~
 243 ~~conducted by such person throughout such person's tenure as election superintendent:~~

244 I, _____, do swear (or affirm) that I will as
 245 superintendent duly attend all ensuing primaries and elections during the continuance
 246 thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in
 247 carrying on the same, that I will make a true and perfect return of such primaries and
 248 elections, and that I will at all times truly, impartially, and faithfully perform my
 249 duties in accordance with Georgia laws to the best of my judgment and ability.

250 ~~(B)~~ In the case of a board of elections, each member of the board shall take an oath in
 251 the following form upon becoming a member of the board which shall apply to all

252 primaries and elections conducted by the board throughout such person's tenure on the
253 board:

254 I, _____, do swear (or affirm) that I will as a member of
255 the board of elections duly attend all ensuing primaries and elections during the
256 continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or
257 abuse in carrying on the same, that I will make a true and perfect return of such
258 primaries and elections, and that I will at all times truly, impartially, and faithfully
259 perform my duties in accordance with Georgia laws to the best of my judgment and
260 ability.

261 ~~(E)~~(B) In the case of an election supervisor or designee for a board of elections or
262 board of elections and registration, the election supervisor or designee shall take an oath
263 in the following form upon being appointed as an election supervisor or designee of the
264 board which shall apply to all primaries and elections conducted by the board
265 throughout such person's tenure:

266 I, _____, do swear (or affirm) that I will duly attend all
267 ensuing primaries and elections during the continuance thereof, that I will to the best
268 of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will
269 make a true and perfect return of such primaries and elections, and that I will at all
270 times truly, impartially, and faithfully perform my duties in accordance with Georgia
271 laws to the best of my judgment and ability.

272 ~~(D)~~(C) Each judge of the probate court serving as an election superintendent, each
273 member of a board of elections or board of elections and registration, and each election
274 supervisor or designee for a board of elections or board of elections and registration
275 serving on July 1, 2011, shall take the appropriate oath as set forth in this Code section
276 which shall apply to all primaries and elections conducted throughout such person's
277 tenure in that position."

278

SECTION 7.

279 Said title is further amended by repealing and reserving Code Section 21-2-74, relating to
280 creation of board to assume duties of superintendent in counties without a board of elections
281 and in which judge of probate court is candidate for public office.

282

SECTION 8.

283 Said title is further amended by repealing Code Section 21-2-74.1, relating to acting election
284 superintendents during vacancy, filling vacancies, and compensation.

285

SECTION 9.

286 Said title is further amended by revising Code Section 21-2-76, relating to eligibility of
287 person to serve as county election superintendent, as follows:

288 "21-2-76.

289 No person who holds elective office, as defined in this chapter and including every
290 municipal office to which persons can be elected by a vote of the electors under the laws
291 of this state ~~but excluding the office of probate judge~~, shall be eligible to serve as county
292 or municipal election superintendent during the term of such elective office; and the
293 position of any election superintendent ~~other than a probate judge~~ shall be deemed vacant
294 upon such superintendent's qualifying as a candidate for elective public office, as defined
295 in this chapter and including any municipal office to which persons can be elected by a
296 vote of the electors under the laws of this state."

297

SECTION 10.

298 Said title is further amended by revising Code Section 21-2-105, relating to local election
299 official defined, as follows:

300 "21-2-105.

301 As used in this part, the term 'local election official' means:

- 302 (1) A county board of elections or a county board of elections and registration
 303 established pursuant to Code Section 21-2-40; or
 304 (2) ~~A judge of the probate court fulfilling the role of election superintendent; or~~
 305 (3) A municipal election superintendent."

306 **SECTION 11.**

307 Said title is further amended in Code Section 21-2-131, relating to fixing and publishing of
 308 qualification fees, manner of payment, and distribution of fees paid, by revising subsection
 309 (a) as follows:

310 "(a) Qualification fees for party and public offices shall be fixed and published as follows:

311 (1)(A) The governing authority of any county or municipality, not later than February
 312 1 of any year in which a general primary, nonpartisan election, or general election is to
 313 be held, and at least 35 days prior to the special primary or election in the case of a
 314 special primary or special election, shall fix and publish a qualifying fee for each
 315 county or municipal office to be filled in the upcoming primary or election. Except as
 316 otherwise provided in subparagraph (B) of this paragraph, such fee shall be 3 percent
 317 of the total gross salary of the office paid in the preceding calendar year including all
 318 supplements authorized by law if a salaried office.

319 (B) For the offices of clerk of the superior court, judge of the probate court, sheriff, tax
 320 commissioner, and magistrate, the qualifying fee shall be 3 percent of the minimum
 321 salary specified in subsection (a) of Code Section 15-6-88, paragraph (1) of subsection
 322 (a) of Code Section 15-9-63, subsection (a) of Code Section 15-10-23, paragraph (1)
 323 of subsection (a) of Code Section 15-16-20, and paragraph (1) of subsection (b) of Code
 324 Section 48-5-183, exclusive of supplements, cost-of-living increases, and longevity
 325 increases. For the office of members of the county governing authority, the qualifying
 326 fee shall be 3 percent of the base salary established by local Act of the General
 327 Assembly or by Code Section 36-5-25 as adjusted pursuant to Code Section 36-5-24,

328 if applicable, exclusive of compensation supplements for training provided for in Code
329 Section 36-5-27 and cost-of-living adjustments pursuant to Code Section 36-5-28. If
330 not a salaried office, a reasonable fee shall be set by the governing authority of such
331 county or municipality, such fee not to exceed 3 percent of the income derived from
332 such county office by the person holding the office for the preceding year or more than
333 \$35.00 for a municipal office;

334 (2) Within the same time limitation as provided in subparagraph (A) of paragraph (1) of
335 this subsection, the Secretary of State shall fix and publish a qualifying fee for any
336 candidate qualifying by this method with a state political party and for any candidate
337 qualifying with the Secretary of State for a nonpartisan election and for any candidate
338 filing with the Secretary of State his or her notice of candidacy for a general or special
339 election. Such fee shall be 3 percent of the annual salary of the office if a salaried office,
340 except that the fee for members of the General Assembly shall be \$400.00. If not a
341 salaried office, a reasonable fee shall be set by the Secretary of State, such fee not to
342 exceed 3 percent of the income derived from such office by the person holding the office
343 for the preceding year;

344 (3) A reasonable qualifying fee may be set according to party rule for each political party
345 office to be filled in a primary. Such fees shall be set and published by the county or state
346 political party not later than February 1 of the year in which the primary is to be held for
347 the filling of such party office."

348

SECTION 12.

349 Said title is further amended in Code Section 21-2-414, relating to restrictions on campaign
350 activities, giving of food or water, and public opinion polling within the vicinity of a polling
351 place, cellular phone use prohibited, prohibition of candidates from entering certain polling
352 places, and penalty, by revising subsection (d) as follows:

353 "(d) No person whose name appears as a candidate on the ballot being voted upon at a
354 primary, election, special primary, or special election, ~~except a judge of the probate court~~
355 ~~-serving as the election superintendent,~~ shall physically enter any polling place other than
356 the polling place at which that person is authorized to cast his or her ballot for that primary,
357 election, special primary, or special election and, after casting his or her ballot, the
358 candidate shall not return to such polling place until after the poll has closed and voting has
359 ceased or other than to transact business with the board of registrars, so long as the person
360 does not violate any other provision of this Code section. ~~Judges of the probate court~~
361 ~~-serving as election superintendents shall enter polling places only as necessary to fulfill~~
362 ~~their duties as election superintendents and shall not engage in any practice prohibited by~~
363 ~~this Code section."~~

364

SECTION 13.

365 Said title is further amended in Code Section 21-4-3, relating to definitions, by revising
366 subparagraph (B) of paragraph (3) as follows:

367 "(B) In the case of any elected county officers, the county board of elections, ~~if a~~
368 ~~county has such, or the judge of the probate court, provided that, if such judge of the~~
369 ~~probate court is the officer sought to be recalled, then the election superintendent shall~~
370 ~~be the clerk of the superior court; and"~~

371

SECTION 14.

372 Said title is further amended in Code Section 21-4-13, relating to recall election — time for
373 holding, officer to call election, publication of call, form of ballots, vote required to
374 effectuate recall, and special election to fill vacancy created, by revising subsection (c) as
375 follows:

376 "(c) If a recall petition is against an officer who is directed by this Code section to call the
377 election, it shall be called:

378 ~~(1) By~~ by the Secretary of State, if for the Governor; ~~or~~
379 ~~(2) By the clerk of the superior court, if for the judge of the probate court and such judge~~
380 ~~serves as the election superintendent of the county."~~

381

SECTION 15.

382 This Act shall become effective for purposes of creation of boards of elections as required
383 by Section 5 of this Act upon its approval by the Governor or upon its becoming law without
384 such approval and for all other purposes on January 1, 2025.

385

SECTION 16.

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