

The Senate Committee on Ethics offered the following substitute to SB 212:

A BILL TO BE ENTITLED
AN ACT

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

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18

SECTION 1.

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

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

26 (1) Perform county governmental administration duties;

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

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

29 ~~(4)~~(3) Administer oaths to public officers;

30 ~~(5)~~(4) Accept, file, approve, and record bonds of public officers;

31 ~~(6)~~(5) Register and permit certain enterprises;

32 ~~(7)~~(6) Issue marriage licenses;

33 ~~(8)~~(7) Hear traffic cases;

34 ~~(9)~~(8) Hear cases of violations of game and fish laws;

35 ~~(10)~~(9) Hold criminal commitment hearings; and

36 ~~(11)~~(10) Perform such other judicial and ministerial functions as may be provided by
 37 law."

38

SECTION 2.

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

41 "15-9-64.

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

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

51

SECTION 3.

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

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

58

SECTION 4.

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

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

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

71 **SECTION 5.**

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

75 "21-2-40.

76 (a) ~~The General Assembly may by local Act create a board of elections in any county of~~
77 ~~this state and empower the board with the powers and duties of the election superintendent~~
78 ~~relating to the conduct of primaries and elections. Such board shall consist of not fewer~~
79 ~~than three members. In any county in which the judge of the probate court serves as the~~
80 ~~election superintendent, and a local Act creating a board of elections or board of elections~~
81 ~~and registration for such county has not been adopted and taken effect on or before~~
82 ~~January 1, 2025, the governing authority of such county shall and is directed to create a~~
83 ~~board of elections and registration pursuant to subsection (b) of this Code section no later~~
84 ~~than December 15, 2024. Each such board of elections and registration shall assume the~~
85 ~~duties of the county's election superintendent, shall have the powers and duties of the~~
86 ~~election superintendent relating to the conduct of primaries and elections, and shall have~~
87 ~~the powers and duties of a board of registrars relating to the registration of voters and~~
88 ~~absentee balloting procedures beginning on January 1, 2025.~~

89 (b)(1)(A) ~~The General Assembly may by local Act create a board of elections and~~
90 ~~registration in any county of this state and empower the board with the powers and~~
91 ~~duties of the election superintendent relating to the conduct of primaries and elections~~
92 ~~and with the powers and duties of the board of registrars relating to the registration of~~
93 ~~voters and absentee-balloting procedures. Such board shall consist of not fewer than~~
94 ~~three members. Except as provided for in subparagraph (B) of this paragraph, each~~

95 board shall be composed of three members, each of whom shall be an elector and
96 resident of the particular county, who shall be appointed by the county governing
97 authority.

98 (B) A county governing authority may adopt an ordinance expanding a board
99 established pursuant to this subsection to five members, each of whom shall be an
100 elector and resident of the particular county, who shall be appointed by the county
101 governing authority.

102 (C) The county executive committees of the political parties whose candidates at the
103 last preceding regular general election held for the election of Governor that received
104 the largest and second largest number of votes in this state for Governor may submit
105 a list of recommended appointees to a county governing authority for appointment to
106 a board established pursuant to this Code section; provided, however, that such
107 governing authority is under no obligation to appoint any person listed on such list of
108 recommended appointees.

109 (D) Each board established pursuant to this Code section shall select a chairperson
110 from among its members.

111 (c)(1) Each member of each board shall serve for a term of four years and until a
112 successor is appointed and qualified, except in the event of resignation or removal as
113 provided for in subsections (d) and (e) of this Code section.

114 (2) Notwithstanding paragraph (1) of this subsection to the contrary, for the initial boards
115 provided for by this Code section, one member on a three-person board, or two members
116 on a five-person board, shall be appointed to an initial term of two years so as to provide
117 for the staggering of the terms of office of the board members.

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

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

125 (f) The governing authority of the county shall file with the clerk of the superior court of
126 the county an affidavit which states the name and residential address of the person
127 appointed and certifies that such member has been duly appointed as provided in this Code
128 section. The clerk of the superior court shall record each such certification on the minutes
129 of the court and shall certify the name of each such member to the Secretary of State and
130 provide for the issuance of appropriate commissions to the members within the same time
131 and in the same manner as provided by law for registrars.

132 (g) In the event that a vacancy occurs in the office of any member of each board by
133 removal, death, resignation, or otherwise, except by expiration of term, the county
134 governing authority shall appoint a successor for the remainder of the unexpired term. The
135 clerk of the superior court shall be notified of interim appointments and record and certify
136 such appointments in the same manner as the regular appointment of members.

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

140 (i) On January 1, 2025, for each county in which a board of elections and registration is
141 established pursuant to this Code section, each previous election superintendent of the
142 county and each board of registrars of the county shall be relieved of all powers and duties
143 to which each board succeeds by the provisions of this Code section; and such election
144 superintendent and board of registrars shall deliver thereafter to the chairperson of each
145 board, upon his or her written request, the custody of all equipment, supplies, materials,
146 books, papers, records, and facilities of every kind pertaining to such powers and duties.

147 (j)(1) Each board shall be authorized to organize itself, elect its officers, determine its
148 procedural rules and regulations, adopt bylaws, specify the functions and duties of its

149 employees, and otherwise take such action as is appropriate for the management of the
150 affairs committed to its supervision; provided, however, that no such action shall conflict
151 with state law.

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

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

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

162 (l) Each board is authorized to select and appoint an administrative director, to be known
163 as the election supervisor, to administer and supervise conduct of elections, primaries, and
164 registration of electors for the county. The election supervisor shall serve at the pleasure
165 of each board.

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

169 (n) With the consent of the governing authority of the county, each board of elections and
170 registration shall be authorized to expend public funds for the purpose of distributing
171 sample ballots, voter information booklets, and other material designed to inform and
172 adequately instruct the electors of the county with regard to elections. No material
173 distributed by each board shall contain or express, in any manner or form, any commentary
174 or expression of opinion or request for support with respect to any political issue or matter
175 of political concern.

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

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

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

185 (r)(1) Nothing in this Code section shall affect any board of elections or board of
 186 elections and registration established pursuant to a local Act adopted prior to
 187 January 1, 2025.

188 (2) Nothing in this Code section shall affect or limit the power of the General Assembly
 189 to adopt a future local Act amending local laws governing a board of elections or board
 190 of elections and registration created prior to January 1, 2025."

191 **SECTION 6.**

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

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

198 I, _____, do swear (or affirm) that I will as
 199 superintendent duly attend all ensuing primaries and elections during the continuance
 200 thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in
 201 carrying on the same, that I will make a true and perfect return of such primaries and

202 ~~elections, and that I will at all times truly, impartially, and faithfully perform my~~
 203 ~~duties in accordance with Georgia laws to the best of my judgment and ability.~~

204 ~~(B)~~ In the case of a board of elections, each member of the board shall take an oath in
 205 the following form upon becoming a member of the board which shall apply to all
 206 primaries and elections conducted by the board throughout such person's tenure on the
 207 board:

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

215 ~~(C)~~(B) In the case of an election supervisor or designee for a board of elections or
 216 board of elections and registration, the election supervisor or designee shall take an oath
 217 in the following form upon being appointed as an election supervisor or designee of the
 218 board which shall apply to all primaries and elections conducted by the board
 219 throughout such person's tenure:

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

226 ~~(D)~~(C) ~~Each judge of the probate court serving as an election superintendent, each~~
 227 ~~member of a board of elections or board of elections and registration, and each election~~
 228 ~~supervisor or designee for a board of elections or board of elections and registration~~

229 serving on July 1, 2011, shall take the appropriate oath as set forth in this Code section
230 which shall apply to all primaries and elections conducted throughout such person's
231 tenure in that position."

232 **SECTION 7.**

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

236 **SECTION 8.**

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

239 **SECTION 9.**

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

242 "21-2-76.

243 No person who holds elective office, as defined in this chapter and including every
244 municipal office to which persons can be elected by a vote of the electors under the laws
245 of this state ~~but excluding the office of probate judge~~, shall be eligible to serve as county
246 or municipal election superintendent during the term of such elective office; and the
247 position of any election superintendent ~~other than a probate judge~~ shall be deemed vacant
248 upon such superintendent's qualifying as a candidate for elective public office, as defined
249 in this chapter and including any municipal office to which persons can be elected by a
250 vote of the electors under the laws of this state."

251 **SECTION 10.**

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

254 "21-2-105.

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

256 (1) A county board of elections or a county board of elections and registration
257 established pursuant to Code Section 21-2-40; or

258 (2) ~~A judge of the probate court fulfilling the role of election superintendent; or~~

259 (3) A municipal election superintendent."

260 **SECTION 11.**

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

265 "(d) No person whose name appears as a candidate on the ballot being voted upon at a
266 primary, election, special primary, or special election, ~~except a judge of the probate court~~
267 ~~servicing as the election superintendent~~, shall physically enter any polling place other than
268 the polling place at which that person is authorized to cast his or her ballot for that primary,
269 election, special primary, or special election and, after casting his or her ballot, the
270 candidate shall not return to such polling place until after the poll has closed and voting has
271 ceased or other than to transact business with the board of registrars, so long as the person
272 does not violate any other provision of this Code section. ~~Judges of the probate court~~
273 ~~servicing as election superintendents shall enter polling places only as necessary to fulfill~~
274 ~~their duties as election superintendents and shall not engage in any practice prohibited by~~
275 ~~this Code section."~~

276

SECTION 12.

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

279 “(B) In the case of any elected county officers, the county board of elections, ~~if a~~
280 ~~county has such, or the judge of the probate court, provided that, if such judge of the~~
281 ~~probate court is the officer sought to be recalled, then the election superintendent shall~~
282 ~~be the clerk of the superior court; and”~~

283

SECTION 13.

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

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

290 ~~(1) By~~ by the Secretary of State, if for the Governor; ~~or~~

291 ~~(2) By the clerk of the superior court, if for the judge of the probate court and such judge~~
292 ~~serves as the election superintendent of the county.”~~

293

SECTION 14.

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

297

SECTION 15.

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