

The House Committee on Rules offers 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 all boards of elections or
14 boards of elections and registration; to provide for the boards' performance of certain
15 functions and duties for certain municipalities; to provide for definitions; to provide for
16 related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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SECTION 1.

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

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

- (1) Perform county governmental administration duties;
- ~~(2) Perform duties relating to elections;~~
- ~~(3)~~ Fill vacancies in public offices by appointment;
- ~~(4)~~(3) Administer oaths to public officers;
- ~~(5)~~(4) Accept, file, approve, and record bonds of public officers;
- ~~(6)~~(5) Register and permit certain enterprises;
- ~~(7)~~(6) Issue marriage licenses;
- ~~(8)~~(7) Hear traffic cases;
- ~~(9)~~(8) Hear cases of violations of game and fish laws;
- ~~(10)~~(9) Hold criminal commitment hearings; and
- ~~(11)~~(10) Perform such other judicial and ministerial functions as may be provided by law."

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SECTION 2.

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

"15-9-64.

~~The amount of minimum salary provided in Code Section 15-9-63 for the judges of the 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 adding a new Code section to read as follows:

73 "21-2-40.1.

74 (a) For the purposes of this Code section, the term 'board' shall mean a board of elections
75 and registration created pursuant to this Code section.

76 (b)(1) In addition to and notwithstanding any provisions of Code Section 21-2-40 to the
77 contrary, in any county in which the judge of the probate court serves as the election
78 superintendent, and a local Act creating a board of elections or board of elections and
79 registration for such county has not been adopted and taken effect on or before
80 January 1, 2025, the governing authority of such county shall and is directed to create a
81 board of elections and registration pursuant to subsection (b) of this Code section no later
82 than December 15, 2024. Each such board of elections and registration shall assume the
83 duties of the county's election superintendent, shall have the powers and duties of the
84 election superintendent relating to the conduct of primaries and elections, and shall have
85 the powers and duties of a board of registrars relating to the registration of voters and
86 absentee balloting procedures beginning on January 1, 2025.

87 (2)(A) Except as provided for in subparagraph (B) of this paragraph, each board shall
88 be composed of three members, each of whom shall be an elector and resident of the
89 particular county, who shall be appointed by the county governing authority.

90 (B) A county governing authority may adopt an ordinance expanding a board to five
91 members, each of whom shall be an elector and resident of the particular county, who
92 shall be appointed by the county governing authority.

93 (C) The county executive committees of the political parties whose candidates at the
94 last preceding regular general election held for the election of Governor that received

95 the largest and second largest number of votes in this state for Governor may submit
96 a list of recommended appointees to a county governing authority for appointment to
97 a board established pursuant to this Code section; provided, however, that such
98 governing authority is under no obligation to appoint any person listed on such list of
99 recommended appointees.

100 (D) Each board shall select a chairperson from among its members.

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

104 (2) Notwithstanding paragraph (1) of this subsection to the contrary, for the initial
105 boards, one member of a three-person board, or two members of a five-person board,
106 shall be appointed to an initial term of two years so as to provide for the staggering of the
107 terms of office of the board members.

108 (d) Each member of a board shall be eligible to succeed himself or herself, provided that
109 no member shall serve more than four consecutive terms on a board. Each member shall
110 have the right to resign at any time by submitting written notice of resignation to the
111 governing authority of the county.

112 (e) Each member of a board shall be subject to removal from such board at any time, for
113 cause after notice and hearing, in the same manner and by the same authority as provided
114 for removal of registrars.

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

122 (g) In the event that a vacancy occurs on a board due to removal, death, resignation, or
123 otherwise, except by expiration of term, the county governing authority shall appoint a
124 successor for the remainder of the unexpired term. The clerk of the superior court shall be
125 notified of interim appointments and record and certify such appointments in the same
126 manner as the regular appointment of members.

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

130 (i) On January 1, 2025, for each county in which a board is established pursuant to this
131 Code section, the previous election superintendent of the county and the board of registrars
132 of such county shall be relieved of all powers and duties to which a board succeeds by the
133 provisions of this Code section; and such election superintendent and board of registrars
134 shall deliver thereafter to the chairperson of a board, upon his or her written request, the
135 custody of all equipment, supplies, materials, books, papers, records, and facilities of every
136 kind pertaining to such powers and duties.

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

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

143 (k)(1) Each board shall fix and establish, by appropriate resolution entered on its
144 minutes, directives governing the execution of matters within its jurisdiction. A board
145 shall hold regular monthly meetings at a time and place to be fixed by resolution of such
146 board. All meetings shall comply with the open meetings laws and open records laws of
147 the State of Georgia.

148 (2) A board shall maintain a written record of policy decisions that shall be amended to
149 include additions or deletions. Such written record shall be made available for the public
150 to review.

151 (l) A board is authorized to select and appoint an administrative director, to be known as
152 the election supervisor, to administer and supervise conduct of elections, primaries, and
153 registration of electors for the county. The election supervisor shall serve at the pleasure
154 of such board.

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

158 (n) With the consent of the governing authority of the county, a board shall be authorized
159 to expend public funds for the purpose of distributing sample ballots, voter information
160 booklets, and other material designed to inform and adequately instruct the electors of the
161 county with regard to elections. No material distributed by a board shall contain or
162 express, in any manner or form, any commentary or expression of opinion or request for
163 support with respect to any political issue or matter of political concern.

164 (o) Compensation for the members of a board, employees of such board, and the election
165 supervisor shall be fixed by each board with the approval of the governing authority of the
166 county. Such compensation shall be paid from county funds.

167 (p) The governing authority of the county shall provide a board and the election supervisor
168 with proper and suitable offices and equipment.

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

173 (r)(1) Nothing in this Code section shall affect any board of elections or board of
 174 elections and registration established pursuant to a local Act adopted pursuant to Code
 175 Section 21-2-40.

176 (2) Nothing in this Code section shall affect or limit the power of the General Assembly
 177 to enact local legislation:

178 (A) Amending local laws governing boards of elections or boards of elections and
 179 registration established pursuant to Code Section 21-2-40; or

180 (B) Amending the board of a particular county established pursuant to this Code
 181 section."

182 **SECTION 6.**

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

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

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

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

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

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

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

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

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SECTION 7.

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

SECTION 8.

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

SECTION 9.

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

"21-2-76.

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

SECTION 10.

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

"21-2-105.

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

- 247 (1) A county board of elections or a county board of elections and registration
 248 established pursuant to Code Section 21-2-40 or 21-2-40.1; or
 249 (2) ~~A judge of the probate court fulfilling the role of election superintendent, or~~
 250 (3) A municipal election superintendent."

251 **SECTION 11.**

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

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

267 **SECTION 12.**

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

270 "(B) In the case of any elected county officers, the county board of elections, ~~if a~~
 271 ~~county has such, or the judge of the probate court, provided that, if such judge of the~~

272 ~~probate court is the officer sought to be recalled, then the election superintendent shall~~
273 ~~be the clerk of the superior court; and"~~

274 **SECTION 13.**

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

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

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

282 (2) ~~By the clerk of the superior court, if for the judge of the probate court and such judge~~
283 ~~serves as the election superintendent of the county."~~

284 **SECTION 14.**

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

288 **SECTION 15.**

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