

The Senate Committee on Ethics offered the following substitute to HB 414:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to
2 government transparency and campaign finance, so as to revise the definition of "person" to
3 include certain nonresidents of the state; to provide time periods for responding to civil
4 actions brought by the Attorney General pursuant to this chapter; to provide for award of
5 default judgments in such actions; to provide time periods for hearings on such actions; to
6 provide the State Ethics Commission with supplementary investigatory powers related to
7 persons, documents, or information located outside of the state; to revise venue provisions
8 to address out-of-state persons; to provide for related matters; to provide for an effective
9 date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to government
13 transparency and campaign finance, is amended in Code Section 21-5-3, relating to
14 definitions, by revising paragraph (19) as follows:

15 "(19) 'Person' means an individual, partnership, committee, association, corporation,
16 limited liability company, limited liability partnership, trust, professional corporation, or

17 other business entity ~~recognized in the State of Georgia~~, labor organization, or any other
18 organization or group of persons, and shall include a 'nonresident' as that term is defined
19 in Code Section 9-10-90 who commits an act or omission or transacts business within the
20 state which if performed by a resident of this state would be subject to this chapter."

21 **SECTION 2.**

22 Said chapter is further amended in Code Section 21-5-6, relating to powers and duties of the
23 State Ethics Commission, by revising paragraph (14) of subsection (b) and adding a new
24 subsection to read as follows:

25 "(14) To issue orders, after the completion of appropriate proceedings, directing
26 compliance with this chapter or prohibiting the actual or threatened commission of any
27 conduct constituting a violation. Such order may include a provision requiring the
28 violator:

29 (A) To cease and desist from committing further violations;

30 (B) To make public complete statements, in corrected form, containing the information
31 required by this chapter;

32 (C)(i) Except as provided in paragraph (2) of Code Section 21-5-7.1, to pay a civil
33 penalty not to exceed \$1,000.00 for each violation contained in any report required
34 by this chapter or for each failure to comply with any other provision of this chapter
35 or of any rule or regulation promulgated under this chapter; provided, however, that
36 a civil penalty not to exceed \$10,000.00 may be imposed for a second occurrence of
37 a violation of the same provision and a civil penalty not to exceed \$25,000.00 may be
38 imposed for each third or subsequent occurrence of a violation of the same provision.
39 In imposing a penalty or late filing fee under this chapter, the commission may waive
40 or suspend such penalty or fee if the imposition of such penalty or fee would impose
41 an undue hardship on the person required to pay such penalty or fee. The commission
42 may also waive or suspend a penalty or fee in the case of failure to file or late filing

43 of a report if there are no items to be included in the report. For the purposes of the
44 penalties imposed by this division, the same error, act, omission, or inaccurate entry
45 shall be considered a single violation if the error, act, omission, or inaccurate entry
46 appears multiple times on the same report or causes further errors, omissions, or
47 inaccurate entries in that report or in any future reports or further violations in that
48 report or in any future reports.

49 (ii) A civil penalty shall not be assessed except after notice and hearing as provided
50 by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The amount
51 of any civil penalty finally assessed shall be recoverable by a civil action brought in
52 the name of the commission. All moneys recovered pursuant to this Code section
53 shall be deposited in the state treasury.

54 (iii) The Attorney General of this state shall, upon complaint by the commission, or
55 may, upon the Attorney General's own initiative if after examination of the complaint
56 and evidence the Attorney General believes a violation has occurred, bring an action
57 in the superior court in the name of the commission for a temporary restraining order
58 or other injunctive relief or for civil penalties for a violation of any provision of this
59 chapter or any rule or regulation duly issued by the commission.

60 (iv) Any action brought by the Attorney General to enforce civil penalties for a
61 violation of the provisions of this chapter or of any rule or regulation duly issued by
62 the commission or any order issued by the commission ordering compliance or to
63 cease and desist from further violations shall be brought in the superior court of the
64 county of the residence of the party against whom relief is sought. Service of process
65 shall lie in any jurisdiction within the state. In such actions, the superior court inquiry
66 shall be limited to whether notice was given by the commission to the violator in
67 compliance with the Constitution and the rules of procedure of Chapter 13 of Title 50,
68 the 'Georgia Administrative Procedure Act.' Upon satisfaction that notice was given
69 and a hearing was held pursuant to Chapter 13 of Title 50, the 'Georgia

70 Administrative Procedure Act,' the superior court shall enforce the orders of the
71 commission and the civil penalties assessed under this chapter and the superior court
72 shall not make independent inquiry as to whether the violations have occurred.
73 Notwithstanding any provision of Chapter 13 of Title 50, the 'Georgia Administrative
74 Procedure Act,' to the contrary, in any such action if the party against whom relief is
75 sought has not filed a response within 30 days of being served with process in such
76 action, a default judgement shall be entered against the party against whom relief is
77 sought. If the party against whom relief is sought files a response in such action
78 within 30 days of being served with process in such action, the superior court shall fix
79 a place and time for a hearing on the merits of such action which shall occur no later
80 than 30 days after the date the party against whom relief is sought filed its response.
81 Such court may fix additional hearings at such other times and places as are necessary
82 to decide the action.

83 (v) In any action brought by the Attorney General to enforce any of the provisions
84 of this chapter or of any rule or regulation issued by the commission, the judgment,
85 if in favor of the commission, shall provide that the defendant pay to the commission
86 the costs, including reasonable attorneys' fees, incurred by the commission in the
87 prosecution of such action.

88 The commission shall make all such orders that were issued after January 9, 2006,
89 publicly available for review and shall post these and all future orders on the
90 commission's website, and the commission shall make all advisory orders that were
91 issued prior to January 9, 2006, publicly available for review and shall post these orders
92 on the commission's website. Such orders shall serve as precedent for all future orders
93 and opinions of the commission;"

94 "(c)(1) Supplemental to any investigatory or enforcement powers provided to the
95 commission in this chapter, if a matter or person that the commission seeks to obtain
96 documentation or information from is located outside the state, the commission may

97 request the person with such documentation or information to make such documentation
98 or information available to the commission or the commission representative to examine
99 at the location where such person, documentation, or information is located.

100 (2) In the event that a person refuses to comply with a request made pursuant to
101 paragraph (1) of this subsection, the commission may petition that such person be ordered
102 by the superior court to provide the documentation or information sought by the
103 commission. The court shall not order such compliance unless the commission has
104 demonstrated to the satisfaction of the court that the documentation or information under
105 request is pertinent or necessary to further the investigation or enforcement action
106 authorized by this chapter."

107 **SECTION 3.**

108 Said chapter is further amended by revising Code Section 21-5-8, relating to venue, as
109 follows:

110 "21-5-8.

111 Venue for prosecution of civil violations of this chapter or for any other action by or on
112 behalf of the commission shall be in the county of the residence of the candidate or public
113 officer at the time of the alleged violation or action, unless the person is not a Georgia
114 resident, in which case venue is in Fulton County."

115 **SECTION 4.**

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

118 **SECTION 5.**

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