

The Senate Committee on Ethics offered the following substitute to SB 221:

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 provide that any person employed or retained by  
3 a county election superintendent to conduct election duties must be a citizen of the United  
4 States; to revise the rules for determining residence for voter registration; to provide that  
5 motor-voter applications shall be opt-in instead of opt-out; to revise provisions related to  
6 challenging electors; to provide for voting with paper ballots; to provide a definition; to  
7 expand the crime of interfering with a poll officer to include interfering with other election  
8 officials; to provide that intimidation of poll officers and other election officials is also  
9 criminal interference; to penalize the willful neglect or refusal of a county or municipal  
10 election superintendent to call an election where required to do so by a local Act of the  
11 General Assembly; to provide for related matters; to repeal conflicting laws; and for other  
12 purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and  
16 primaries generally, is amended by adding a new Code section to read as follows:

17 "21-2-78.

18 Any person employed or retained by a county election superintendent to undertake any  
19 election related duties arising from this chapter shall be a judicious, intelligent, and upright  
20 citizen of the United States."

21 **SECTION 2.**

22 Said chapter is further amended by revising Code Section 21-2-217, relating to rules for  
23 determining residence, as follows:

24 "21-2-217.

25 (a) In determining the residence of a person desiring to register to vote or to qualify to run  
26 for elective office, the following rules shall be followed so far as they are applicable:

27 (1) The residence of any person shall be held to be in that place in which such person's  
28 habitation is fixed, without any present intention of removing therefrom;

29 (1.1) The residence of any person of this state who is homeless and without a permanent  
30 address shall be the location of the courthouse of the county in which such person resides;

31 (2) A person shall not be considered to have lost such person's residence who leaves such  
32 person's home and goes into another state or county or municipality in this state, for  
33 temporary purposes only, with the intention of returning, unless such person shall register  
34 to vote or perform other acts indicating a desire to change such person's citizenship and  
35 residence; provided, however, that:

36 (A) If a person registers to vote in another state, county, municipality, or legislative  
37 district of any type or sort, that person shall automatically be deemed to have changed  
38 his or her residency;

39 (B) If a person returns to his or her original place of residence after registering to vote  
40 in a different or separate jurisdiction, such person shall submit a new application for  
41 registration to vote in such person's original jurisdiction in order to be deemed a valid  
42 registered elector and resident of such jurisdiction for voting purposes; and

43 (C) Proof of ownership or rental of a post office box within a particular jurisdiction  
44 shall not constitute sufficient grounds to establish a person's residency within that  
45 particular jurisdiction;

46 (3) A person shall not be considered to have gained a residence in any county or  
47 municipality of this state into which such person has come for temporary purposes only  
48 without the intention of making such county or municipality such person's permanent  
49 place of abode;

50 (4) If a person removes to another state with the intention of making it such person's  
51 residence, such person shall be considered to have lost such person's residence in this  
52 state;

53 (4.1) If a person removes to another county or municipality in this state with the intention  
54 of making it such person's residence, such person shall be considered to have lost such  
55 person's residence in the former county or municipality in this state;

56 (5) If a person removes to another state with the intention of remaining there an indefinite  
57 time and making such state such person's place of residence, such person shall be  
58 considered to have lost such person's residence in this state, notwithstanding that such  
59 person may intend to return at some indefinite future period;

60 (6) If a person removes to another county or municipality within this state with the  
61 intention of remaining there an indefinite time and making such other county or  
62 municipality such person's place of residence, such person shall be considered to have lost  
63 such person's residence in the former county or municipality, notwithstanding that such  
64 person may intend to return at some indefinite future period;

65 (7) The residence for voting purposes of a person shall not be required to be the same as  
66 the residence for voting purposes of his or her spouse;

67 (8) No person shall be deemed to have gained or lost a residence by reason of such  
68 person's presence or absence while enrolled as a student at any college, university, or  
69 other institution of learning in this state;

70 (9) The mere intention to acquire a new residence, without the fact of removal, shall avail  
71 nothing; neither shall the fact of removal without the intention;

72 (10) No member of the armed forces of the United States shall be deemed to have  
73 acquired a residence in this state by reason of being stationed on duty in this state;

74 (11) If a person removes to the District of Columbia or other federal territory, another  
75 state, or foreign country to engage in government service, such person shall not be  
76 considered to have lost such person's residence in this state during the period of such  
77 service; and the place where the person resided at the time of such person's removal shall  
78 be considered and held to be such person's place of residence;

79 (12) If a person is adjudged mentally ill and is committed to an institution for the  
80 mentally ill, such person shall not be considered to have gained a residence in the county  
81 in which the institution to which such person is committed is located;

82 (13) If a person goes into another state and while there exercises the right of a citizen by  
83 voting, such person shall be considered to have lost such person's residence in this state;

84 (14) The specific address in the county or municipality in which a person has declared  
85 a homestead exemption, if a homestead exemption has been claimed, shall be deemed the  
86 person's residence address; and

87 (15) For voter registration purposes, the board of registrars and, for candidacy residency  
88 purposes, the Secretary of State, election superintendent, or hearing officer may consider  
89 evidence of where the person receives significant mail such as personal bills and any  
90 other evidence that indicates where the person resides.

91 (b) In determining a voter's qualification to register and vote, the registrars to whom such  
92 application is made shall consider, in addition to the applicant's expressed intent, any  
93 relevant circumstances determining the applicant's residence. The registrars taking such  
94 registration may consider the applicant's financial independence, business pursuits,  
95 employment, income sources, residence for income tax purposes, age, marital status,  
96 residence of parents, spouse, and children, if any, leaseholds, sites of personal and real

97 property owned by the applicant, motor vehicle and other personal property registration,  
98 national change of address program information sponsored by the United States Postal  
99 Service, and any other factor, including, but not limited to, professionally aggregated  
100 commercial or proprietary information that includes, but is not limited to, change of  
101 addresses, lease information, insurance change of addresses, and identification change of  
102 addresses, and other such factors that the registrars may reasonably deem necessary to  
103 determine in good faith the qualification of an applicant to vote in a primary or election  
104 including a sworn statement by any person with relevant information pertaining to a factor  
105 indicating an applicant's residence or nonresidence. The decision of the registrars to whom  
106 such application is made shall be presumptive evidence of a person's residence for voting  
107 purposes."

108

### SECTION 3.

109 Said chapter is further amended by revising subsection (a) of Code Section 21-2-221, relating  
110 to driver's license or identification card application as application for voter registration, as  
111 follows:

112 "(a) Each application to obtain, renew, or change the name or address on a driver's license  
113 or identification card issued by the Department of Driver Services pursuant to Chapter 5  
114 of Title 40 made by an applicant who is within six months of such applicant's eighteenth  
115 birthday or older ~~shall~~ may, if eligible, also serve as an application for voter registration  
116 ~~unless the applicant declines to register to vote through specific declination or by failing~~  
117 ~~to sign the voter registration application.~~ The applicant may sign the voter registration  
118 application to register to vote or to update the voter's registration if the voter has changed  
119 his or her address. Such applicant must be a citizen of the United States and a resident of  
120 Georgia."

121

**SECTION 4.**

122 Said chapter is further amended by revising subsection (b) of Code Section 21-2-230, relating  
123 to challenge of persons on list of electors by other electors, procedure, hearing, and right of  
124 appeal, and by adding a new subsection to read as follows:

125 "(b) Upon the filing of such challenge, the board of registrars shall immediately consider  
126 such challenge and determine whether probable cause exists to sustain such challenge. If  
127 the registrars do not find probable cause, the challenge shall be denied. If the registrars find  
128 probable cause, the registrars shall notify the poll officers of the challenged elector's  
129 precinct or, if the challenged elector voted by absentee ballot, notify the poll officers at the  
130 absentee ballot precinct and, if practical, notify the challenged elector and afford such  
131 elector an opportunity to answer. Probable causes shall include, but not be limited to, an  
132 elector registering to vote in different jurisdiction; an elector obtaining a homestead  
133 exemption in different jurisdiction; a missing or invalid date of birth for an elector; a  
134 missing, nonexistent, or invalid address for an elector; or an elector being registered at a  
135 nonresidential address. If a challenged elector's name appears on a search on the National  
136 Change of Address data base, as maintained by the United States Postal Service, as having  
137 changed such elector's residence to a new jurisdiction, the presence of such elector's name  
138 on such data base shall constitute sufficient cause to sustain the challenge against the  
139 elector; provided, however, that:

140 (1) If the challenge is based solely upon an elector's name appearing on such data base  
141 within 45 days of a primary, run-off primary, election, or run-off election, such challenge  
142 shall be postponed until the certification of such primary, election, or runoff is completed;  
143 and

144 (2) Any challenge based solely upon an elector's name appearing on such data base but  
145 who is determined eligible pursuant to the residency definitions provided for in  
146 paragraph (8), (10), or (11) of subsection (a) of Code Section 21-2-217 shall be deemed  
147 insufficient to sustain such challenge."

148 "(k) Any challenge of an elector that occurs during a primary or general election shall  
149 continue through the run-off primary or run-off election of such primary or general  
150 election."

151 **SECTION 5.**

152 Said chapter is further amended in Article 6, relating to registration of voters, by adding a  
153 new Code section to read as follows:

154 "21-2-237.

155 Any proceedings relating to a challenge brought against an elector under this chapter shall  
156 not be governed by Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' or the rules of  
157 evidence set forth in Title 24. However, such evidence presented at any hearing on a  
158 challenge shall be persuasive and reliable."

159 **SECTION 6.**

160 Said chapter is further amended by revising Code Section 21-2-334, relating to voting by  
161 paper ballot when use of voting machine impossible or impracticable, as follows:

162 "21-2-334.

163 For any ~~If a method of~~ nomination or election for any candidate or office, or ~~of for~~ voting  
164 on any question is prescribed by law, ~~in which the use of voting machines is not possible~~  
165 ~~or practicable, or in case, at any primary or election, the number of candidates seeking~~  
166 ~~nomination or nominated for any office renders the use of voting machines for such office~~  
167 ~~at such primary or election impracticable, or if, for any other reason, at any primary or~~  
168 ~~election the use of voting machines wholly or in part is not practicable;~~ the superintendent,  
169 with the review and approval by the State Election Board, may arrange to have the voting  
170 for such candidates or offices or for such questions conducted by paper ballots. In such  
171 cases, paper ballots shall be printed for such candidates, offices, or questions, and the  
172 primary or election shall be conducted by the poll officers, and the ballots shall be counted

173 and return thereof made in the manner required by law for such nominations, offices, or  
174 questions, insofar as paper ballots are used."

175 **SECTION 7.**

176 Said chapter is further amended by revising Code Section 21-2-529, relating to liability for  
177 costs and methods of collecting, as follows:

178 "21-2-529.

179 The contestant and the defendant shall be liable to the officers and witnesses for the costs  
180 made by them, respectively. If the result of the primary or election is confirmed, the  
181 petition dismissed, or the prosecution fails, judgment shall be rendered against the  
182 contestant for costs; and, if the judgment is against the defendant or the result of the  
183 primary or election is set aside, he or she shall pay the costs at the discretion of the court.  
184 After entry of judgment, the costs may be collected by attachment or otherwise. Under no  
185 circumstances shall a nonprevailing party be liable for reasonable or actual attorney's fees  
186 so long as the election contest was brought in good faith."

187 **SECTION 8.**

188 Said chapter is further amended by revising Code Section 21-2-569, relating to interfering  
189 with poll officers, as follows:

190 "21-2-569.

191 (a) As used in this Code section, the term 'acts in any other manner to intimidate' means  
192 to undertake or pursue a knowing and willful course of conduct which causes emotional  
193 distress by placing another person in reasonable fear for such person's safety or for the  
194 safety of another person and which serves no legitimate purpose.

195 (b) Any person, including any poll officer or other election official, who willfully prevents  
196 any poll officer or other election official from performing the duties imposed on him or her



197 by this chapter or acts in any other manner to intimidate any poll officer or election official  
198 from faithfully performing his or her duties as required by law shall be guilty of a felony."

199 **SECTION 9.**

200 Said chapter is further amended by adding a new Code section to read as follows:

201 "21-2-596.1.

202 Any county or municipal election superintendent on whom a duty to call an election is laid  
203 by a local Act of the General Assembly who willfully neglects or refuses to perform his or  
204 her duty to call such election shall be guilty of a misdemeanor."

205 **SECTION 10.**

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