

Senate Bill 309

By: Senators McKoon of the 29th, Mullis of the 53rd, Albers of the 56th, Gooch of the 51st, Miller of the 49th and others

AS PASSED SENATE

**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 primaries and elections generally, so as to provide for the time for opening and closing of the
3 polls; to provide for the number of votes for nomination and election in special primaries;
4 to provide that special primaries shall be conducted with special elections to fill vacancies
5 in partisan offices; to provide for the filling of vacancies in certain offices; to amend
6 Chapter 5 of Title 45 of the Official Code of Georgia Annotated, relating to vacation of
7 office, so as to provide for the filling of vacancies in certain offices; to provide for related
8 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and
12 elections generally, is amended by revising Code Section 21-2-403, relating to time for
13 opening and closing of polls, as follows:

14 "21-2-403.

15 At all primaries and elections the polls shall be opened at 7:00 A.M. eastern standard time
16 or eastern daylight time, whichever is applicable, and shall remain open continuously until
17 7:00 P.M. eastern standard time or eastern daylight time, whichever is applicable, at which
18 time they shall be closed; ~~provided, however, that, in all cities having a population of~~
19 ~~300,000 or more according to the United States decennial census of 1970 or any future~~
20 ~~such census, the polls shall remain open continuously until 8:00 P.M. eastern standard time~~
21 ~~or eastern daylight time, whichever is applicable, during the cities' general elections, at~~
22 ~~which time they shall be closed and provided, further, that, in a special election held to fill~~
23 ~~a vacancy in an office in which the district represented by such office lies wholly within~~
24 ~~the boundaries of a city, the polls shall close at the same time as for a municipal general~~
25 ~~election in such city."~~

26 **SECTION 2.**

27 Said chapter is further amended by revising Code Section 21-2-501, relating to number of
 28 votes required for election, as follows:

29 "21-2-501.

30 (a)(1) Except as otherwise provided in this Code section, no candidate shall be
 31 nominated for public office in any primary for any public office or in a special primary
 32 for a federal office or elected to any public office in any election or special election
 33 unless such candidate shall have received a majority of the votes cast to fill such
 34 nomination or public office. In instances where no candidate receives a majority of the
 35 votes cast in such situations, a run-off primary, special primary runoff, run-off election,
 36 or special election runoff between the candidates receiving the two highest numbers of
 37 votes shall be held. Unless such date is postponed by a court order, such run-off primary,
 38 special primary runoff, run-off election, or special election runoff shall be held as
 39 provided in this subsection. Notwithstanding any provision of law to the contrary, in a
 40 special primary to nominate a candidate for any public office other than a federal office,
 41 the candidate receiving the highest number of the votes cast in such special primary shall
 42 be declared nominated and no special primary runoff shall be conducted.

43 (2) In the case of a runoff from a general primary or a special primary or special election
 44 held in conjunction with a general primary, the runoff shall be held on the Tuesday of the
 45 ninth week following such general primary.

46 (3) In the case of a runoff from a general election for a federal office or a runoff from a
 47 special primary or special election for a federal office held in conjunction with a general
 48 election, the runoff shall be held on the Tuesday of the ninth week following such general
 49 election.

50 (4) In the case of a runoff from a general election for an office other than a federal office
 51 or a runoff from a special primary or special election for an office other than a federal
 52 office held in conjunction with a general election, the runoff shall be held on the
 53 twenty-eighth day after the day of holding the preceding general election.

54 (5) In the case of a runoff from a special primary or special election for a federal office
 55 not held in conjunction with a general primary or general election, the runoff shall be held
 56 on the Tuesday of the ninth week following such special primary or special election.

57 (6) In the case of a runoff from a special primary or special election for an office other
 58 than a federal office not held in conjunction with a general primary or general election,
 59 the runoff shall be held on the twenty-eighth day after the day of holding the preceding
 60 ~~special primary~~ or special election; provided, however, that, if such runoff is from a
 61 special primary or special election held in conjunction with a special primary or special
 62 election for a federal office and there is a runoff being conducted for such federal office,

63 the runoff from the special primary or special election conducted for such other office
64 may be held in conjunction with the runoff for the federal office.

65 (7) If any candidate eligible to be in a runoff withdraws, dies, or is found to be ineligible,
66 the remaining candidates receiving the two highest numbers of votes shall be the
67 candidates in the runoff.

68 (8) The candidate receiving the highest number of the votes cast in such run-off primary,
69 special primary runoff, run-off election, or special election runoff to fill the nomination
70 or public office sought shall be declared the winner.

71 (9) The name of a write-in candidate eligible for election in a runoff shall be printed on
72 the election or special election run-off ballot in the independent column.

73 (10) The run-off primary, special primary runoff, run-off election, or special election
74 runoff shall be a continuation of the primary, special primary, election, or special election
75 for the particular office concerned. Only the electors who were duly registered to vote
76 and not subsequently deemed disqualified to vote in the primary, special primary,
77 election, or special election for candidates for that particular office shall be entitled to
78 vote therein, and only those votes cast for the persons designated as candidates in such
79 run-off primary, special primary runoff, run-off election, or special election runoff shall
80 be counted in the tabulation and canvass of the votes cast. No elector shall vote in a
81 run-off primary or special primary runoff in violation of Code Section 21-2-224.

82 (b) For the purposes of this subsection, the word 'plurality' shall mean the receiving by one
83 candidate alone of the highest number of votes cast. If the municipal charter or ordinances
84 of a municipality as now existing or as amended subsequent to September 1, 1968, provide
85 that a candidate may be nominated or elected by a plurality of the votes cast to fill such
86 nomination or public office, such provision shall prevail. Otherwise, no municipal
87 candidate shall be nominated for public office in any primary or elected to public office in
88 any election unless such candidate shall have received a majority of the votes cast to fill
89 such nomination or public office.

90 (c) In instances in which no municipal candidate receives a majority of the votes cast and
91 the municipal charter or ordinances do not provide for nomination or election by a plurality
92 vote, a run-off primary or election shall be held between the candidates receiving the two
93 highest numbers of votes. Such runoff shall be held on the twenty-eighth day after the day
94 of holding the first primary or election, unless such run-off date is postponed by court
95 order; provided, however, that, in the case of a runoff from a municipal special election that
96 is held in conjunction with a special election for a federal office and not in conjunction
97 with a general primary or general election, the municipality may conduct such runoff from
98 such municipal special election on the date of the special election runoff for the federal
99 office. Only the electors entitled to vote in the first primary or election shall be entitled to

100 vote in any run-off primary or election resulting therefrom; provided, however, that no
 101 elector shall vote in a run-off primary in violation of Code Section 21-2-216. The run-off
 102 primary or election shall be a continuation of the first primary or election, and only those
 103 votes cast for the candidates receiving the two highest numbers of votes in the first primary
 104 or election shall be counted. No write-in votes may be cast in such a primary, run-off
 105 primary, or run-off election. If any candidate eligible to be in a runoff withdraws, dies, or
 106 is found to be ineligible, the remaining candidates receiving the two highest numbers of
 107 votes shall be the candidates in such runoff. The municipal candidate receiving the highest
 108 number of the votes cast in such run-off primary or run-off election to fill the nomination
 109 or public office sought shall be declared the winner. The municipality shall give written
 110 notice to the Secretary of State of such runoff as soon as such municipality certifies the
 111 preceding primary, special primary, election, or special election.

112 (d) The name of a municipal write-in candidate eligible for election in a municipal runoff
 113 shall be printed on the municipal run-off election ballot in the independent column.

114 (e) In all cities having a population in excess of 100,000 according to the United States
 115 decennial census of 1980 or any future such census, in order for a municipal candidate to
 116 be nominated for public office in any primary or elected to public office in any municipal
 117 election, he or she must receive a majority of the votes cast.

118 (f) Except for presidential electors, to be elected to public office in a general election, a
 119 candidate must receive a majority of the votes cast in an election to fill such public office.
 120 To be elected to the office of presidential electors, no slate of candidates shall be required
 121 to receive a majority of the votes cast, but that slate of candidates shall be elected to such
 122 office which receives the highest number of votes cast."

123 SECTION 3.

124 Said chapter is further amended by revising Code Section 21-2-504, relating to special
 125 primary or election upon failure to nominate or elect or upon death, withdrawal, or failure
 126 of officer-elect to qualify, as follows:

127 "21-2-504.

128 (a) Whenever any primary or election shall fail to fill a particular nomination or office and
 129 such failure cannot be cured by a run-off primary or election, whenever any person elected
 130 to public office shall die or withdraw prior to taking office, or whenever any person elected
 131 to public office shall fail to take that office validly, the authority with whom the candidates
 132 for such nomination or office file notice of candidacy shall call a special primary ~~or~~ and
 133 special election to fill such position. ~~If a special primary will not be held and unless~~
 134 ~~otherwise provided by law, the call of a~~ The call of the special primary and special election
 135 shall be made within 45 days after the occurrence of the vacancy.

136 (b) Whenever any person elected to municipal public office shall, after taking office, die,
 137 withdraw, or for any other reason create a vacancy in his or her office and the municipal
 138 charter fails to provide a method for the filling of such vacancy, the governing authority
 139 shall thereupon call a special election to fill such vacancy."

140 **SECTION 4.**

141 Said chapter is further amended by revising Code Section 21-2-540, relating to the conduct
 142 of special elections generally, as follows:

143 "21-2-540.

144 (a)(1) Every special election shall be held and conducted in all respects in accordance
 145 with the provisions of this chapter relating to general elections; and the provisions of this
 146 chapter relating to general elections shall apply thereto insofar as practicable and as not
 147 inconsistent with any other provisions of this chapter. All special elections held at the
 148 time of a general election, as provided by Code Section 21-2-541, shall be conducted by
 149 the poll officers by the use of the same equipment and facilities, ~~so far~~ insofar as
 150 practicable, as are used for such general election.

151 (2) Except as otherwise provided in Code Section 21-2-543.1, a vacancy in a partisan
 152 state or county elected office which is filled by special election shall require a special
 153 primary followed by a special election.

154 (b) At least 29 days shall intervene between the call of a special primary and the holding
 155 of same, and at least 29 days shall intervene between the call of a special election and the
 156 holding of same. The period during which candidates may qualify to run in a special
 157 primary or a special election shall remain open for a minimum of two and one-half days.
 158 Special elections and special primaries which are to be held in conjunction with ~~the a~~
 159 presidential preference primary, a state-wide general primary, or a state-wide general
 160 election shall be called at least 90 days prior to the date of such presidential preference
 161 primary, state-wide general primary, or state-wide general election; provided, however, that
 162 this requirement shall not apply to special elections held on the same date as such
 163 presidential preference primary, state-wide general primary, or state-wide general election
 164 but conducted completely separate and apart from such state-wide general primary or
 165 state-wide general election using different ballots or voting equipment, facilities, poll
 166 workers, and paperwork. ~~Notwithstanding any provision of this subsection to the contrary,~~
 167 ~~special elections which are to be held in conjunction with the state-wide general primary~~
 168 ~~or state-wide general election in 2014 shall be called at least 60 days prior to the date of~~
 169 ~~such state-wide general primary or state-wide general election.~~

170 (c)(1) Notwithstanding any other provision of law to the contrary, a special primary or
 171 special election to fill a vacancy in a county or municipal office shall be held only on one

172 of the following dates which is at least 29 days after the date of the call for the special
173 election:

174 (A) In odd-numbered years, any such special election shall only be held on:

175 (i) The third Tuesday in March;

176 (ii) The third Tuesday in June;

177 (iii) The third Tuesday in September; or

178 (iv) The Tuesday after the first Monday in November; and

179 (B) In even-numbered years, any such special election shall only be held on:

180 (i) The third Tuesday in March; provided, however, that in the event that a special
181 election is to be held under this provision in a year in which a presidential preference
182 primary is to be held, then any such special election shall be held on the date of and
183 in conjunction with the presidential preference primary;

184 (ii) The date of the general primary; or

185 (iii) The Tuesday after the first Monday in November;

186 provided, however, that, in the event that a special election or special primary to fill a
187 federal or state office on a date other than the dates provided in this paragraph has been
188 scheduled and it is possible to hold a special election or special primary to fill a vacancy
189 in a county, municipal, or school board office in conjunction with such special election
190 or special primary to fill a federal or state office, the special election or special primary
191 to fill such county, municipal, or school board office may be held on the date of and in
192 conjunction with such special election or special primary to fill such federal or state
193 office provided all other provisions of law regarding such elections are met.

194 (2) Notwithstanding any other provision of law to the contrary, a special election to
195 present a question to the voters shall be held only on one of the following dates which is
196 at least 29 days after the date of the call for the special election:

197 (A) In odd-numbered years, any such special election shall only be held on the third
198 Tuesday in March or on the Tuesday after the first Monday in November; and

199 (B) In even-numbered years, any such special election shall only be held on:

200 (i) The date of and in conjunction with the presidential preference primary if one is
201 held that year;

202 (ii) The date of the general primary; or

203 (iii) The Tuesday after the first Monday in November.

204 (3) The provisions of this subsection shall not apply to:

205 (A) Special elections held pursuant to Chapter 4 of this title, the 'Recall Act of 1989,'
206 to recall a public officer or to fill a vacancy in a public office caused by a recall
207 election; and

208 (B) Special primaries or special elections to fill vacancies in federal or state public
209 offices.

210 (d) Except as otherwise provided by this chapter, the superintendent of each county or
211 municipality shall publish the call of the special election or special primary.

212 ~~(e) Candidates in special elections for partisan offices shall be listed alphabetically on the~~
213 ~~ballot and may choose to designate on the ballot their party affiliation. The party affiliation~~
214 ~~selected by a candidate shall not be changed following the close of qualifying. A political~~
215 body may nominate a candidate to seek office in a special election for a partisan state or
216 county office by convention in accordance with the rules of the political body, provided
217 that such convention is held prior to the time of the special primary. In the case of a special
218 election to fill a federal or state office, only those candidates who file a certificate sworn
219 to by the chairperson and secretary of a political body duly registered with the Secretary
220 of State as required by Code Section 21-2-110, stating that the named candidate is the
221 nominee of that political body by virtue of being nominated in a convention shall be listed
222 on the special election ballot under the name of the political body. In the case of a special
223 election to fill a federal or state office, the certificate shall be filed in the office of the
224 Secretary of State not later than the close of business on the third day after the special
225 primary. In the case of a special election to fill a county office, the certificate shall be filed
226 in the office of the superintendent not later than the close of business on the third day after
227 the special primary."

228 **SECTION 5.**

229 Said chapter is further amended by revising Code Section 21-2-541, relating to the holding
230 of special primary or election at time of general primary or election and inclusion of
231 candidates and questions in special primary or election on ballot, as follows:

232 "21-2-541.

233 (a) A special primary or special election may be held at the time of a general primary or
234 general election.

235 (b) If the times specified for the closing of the registration list for a special primary or
236 special election are the same as those for a general primary or general election, the
237 candidates and questions in such special primary or special election shall be included on
238 the ballot for such general primary or general election. In such an instance, the name of
239 the office and the candidates in such special primary or special election shall appear on the
240 ballot in the position where such names would ordinarily appear if such contest was a
241 general primary or general election."

242 **SECTION 6.**

243 Said chapter is further amended by revising Code Section 21-2-544, relating to special
 244 election for General Assembly vacancy, as follows:

245 "21-2-544.

246 Whenever a vacancy shall occur or exist in either house of the General Assembly, such
 247 vacancy shall be filled as follows:

248 (1) ~~If such vacancy shall occur during a session of the General Assembly~~ there are more
 249 than 12 months remaining in the unexpired term of office, the Governor shall issue,
 250 within ten days after the occurrence of such vacancy, a writ of election to the Secretary
 251 of State for a special primary and special election to fill such vacancy which shall be held
 252 on the ~~date~~ dates named in the writ, which shall not be fewer than 30 ~~nor more than 60~~
 253 days after its issuance;

254 ~~(2) Except as provided in paragraph (4) of this Code section, if such vacancy shall occur~~
 255 ~~after the conclusion of the regular session which is held during the first year of the term~~
 256 ~~of office of members of the General Assembly, but more than 60 days prior to the~~
 257 ~~Tuesday following the first Monday in November of the first year of the term of office~~
 258 ~~of members of the General Assembly, the Governor may issue at any time but no later~~
 259 ~~than 60 days prior to the Tuesday following the first Monday in November of the first~~
 260 ~~year of the term of office of members of the General Assembly a writ of election to the~~
 261 ~~Secretary of State for a special election to fill such vacancy which shall be held not fewer~~
 262 ~~than 30 days after its issuance nor later than 60 days prior to the Tuesday following the~~
 263 ~~first Monday in November of the first year of the term of office of members of the~~
 264 ~~General Assembly;~~

265 (3) ~~If such vacancy shall occur after the conclusion of the regular session of the General~~
 266 ~~Assembly held during the first year of the term of office of members of the General~~
 267 ~~Assembly during the period beginning 60 days prior to the Tuesday following the first~~
 268 ~~Monday in November of such year and ending on the day prior to the beginning of the~~
 269 ~~regular session of the General Assembly held during the second year of the term of office~~
 270 ~~of members of the General Assembly, the Governor shall issue, within ten days after the~~
 271 ~~occurrence of such vacancy, a writ of election to the Secretary of State for a special~~
 272 ~~election to fill such vacancy which shall be held on the date named in the writ, which~~
 273 ~~shall not be fewer than 30 nor more than 60 days after its issuance;~~

274 (4) ~~If such vacancy shall occur following the election of a member of the General~~
 275 ~~Assembly but prior to such member taking office, such vacancy shall be filled in~~
 276 ~~accordance with Code Section 21-2-504, but such election shall be called within ten days~~
 277 ~~of such vacancy and shall be held not fewer than 30 nor more than 60 days following the~~
 278 ~~date of such call;~~

279 ~~(5)(2)~~ If there are 12 months or less remaining in the unexpired term of office ~~If such~~
 280 ~~vacancy shall occur following the conclusion of the regular session of the General~~
 281 ~~Assembly during the second year of the term of office of members of the General~~
 282 ~~Assembly,~~ the issuance of a writ of election to fill such vacancy shall be in the discretion
 283 of the Governor except as otherwise provided in paragraph ~~(6)~~ (3) of this Code section
 284 and if the Governor chooses to issue such writ of election to fill such vacancy, such
 285 special primary and special election shall be held on the ~~date~~ dates named in the writ,
 286 which shall not be fewer than 30 ~~nor more than 60~~ days after its issuance; or

287 ~~(6)(3)(A)~~ If such vacancy shall exist at a time when the members of the General
 288 Assembly shall be required to meet in special session and there are 12 months or less
 289 remaining in the unexpired term of office, the Governor shall issue, within two days
 290 after the calling of an extraordinary session of the General Assembly during the
 291 existence of such vacancy, a writ of election to the Secretary of State for a special
 292 primary and special election to fill such vacancy which shall be held on the ~~date~~ dates
 293 named in the writ, which shall not be fewer than 30 ~~nor more than 60~~ days after its
 294 issuance, provided that, in the reasonable judgment of the Governor, sufficient time
 295 exists to conduct such special primary and special election and any runoffs therefrom
 296 prior to the conclusion of the extraordinary session; or

297 (B) If such vacancy shall occur after the issuance by the Governor of a call for an
 298 extraordinary session of the General Assembly, but prior to the conclusion of such
 299 extraordinary session and there are 12 months or less remaining in the unexpired term
 300 of office, the Governor shall issue, within five days after the occurrence of such
 301 vacancy, a writ of election to the Secretary of State for a special primary and special
 302 election to fill such vacancy which shall be held on the ~~date~~ dates named in the writ,
 303 which shall not be fewer than 30 ~~nor more than 60~~ days after its issuance, provided that,
 304 in the reasonable judgment of the Governor, sufficient time exists to conduct such
 305 special primary and special election and any runoffs therefrom prior to the conclusion
 306 of the extraordinary session.

307 Upon receiving the writ of election from the Governor, the Secretary of State shall then
 308 transmit the writ of election to the superintendent of each county involved and shall publish
 309 the call of the special primary and special election."

310 SECTION 7.

311 Chapter 5 of Title 45 of the Official Code of Georgia Annotated, relating to vacation of
 312 office, is amended by revising Code Section 45-5-3, relating to election or appointment of
 313 successor to fill unexpired terms, as follows:

314 "45-5-3.

315 (a) In those instances where the law applicable to an elective public office does not
 316 provide for filling a vacancy in such office and the Governor fills such vacancy pursuant
 317 to the authority of Article V, Section II, Paragraph VIII, subparagraph (a) of the
 318 Constitution and in those instances where the Governor fills a vacancy in the office of
 319 district attorney pursuant to Article VI, Section VIII, Paragraph I, subparagraph (a) of the
 320 Constitution, the vacancy shall be filled as follows:

321 (1) If the vacancy occurs during the final 27 months of a term of office, the Governor
 322 shall appoint a person to fill such vacancy for the remainder of the unexpired term of
 323 office; or

324 (2) If the vacancy occurs at any time prior to the time specified in paragraph (1) of this
 325 subsection, the Governor shall appoint a person to fill such vacancy until such vacancy
 326 is filled for the unexpired term of office at a special primary and special election provided
 327 for in subsection (b) of this Code section.

328 (b) When a special primary and special election is are required to fill a vacancy for the
 329 unexpired term of office as provided by paragraph (2) of subsection (a) of this Code
 330 section, such special primary shall be held on the same date as the general primary which
 331 is first held following the date of the vacancy and in conjunction with such general primary
 332 and such special election shall be held on the same date as the general election which is
 333 first held following the date of the vacancy and in conjunction with such general election.

334 (c) It shall be the duty of the appropriate state or local election officials to call and conduct
 335 the special primaries and special elections required by subsection (b) of this Code section
 336 in accordance with the applicable provisions of Chapter 2 of Title 21, known as the
 337 'Georgia Election Code.' Any person elected to fill a vacancy pursuant to subsection (b)
 338 of this Code section shall possess the qualifications to seek and hold such office provided
 339 by law applicable to the office wherein the vacancy occurred.

340 (d) The provisions of this Code section shall not apply to a vacancy which occurs in any
 341 elective office of a municipality of this state."

342 **SECTION 8.**

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

345 **SECTION 9.**

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