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ELECTIONS Elections and Primaries Generally: Eliminate Nonpartisan Primaries Except for Municipal Officers; Provide that Nonpartisan Elections for Certain County and State Offices Be Held in Conjunction with the General Primary; Provide for Qualifying Time for Certain Nonpartisan Elections; Provide for the Form of Nonpartisan Election Ballots; Specify the Circumstances under Which Election Superintendents May Open Absentee Ballots; Change the Method of Removing Deceased Voters from the Electors List; Authorize the Secretary of State to Obtain the Names of Georgians Who Die

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# Commission; Provide Times for Certification of Election Results

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## ELECTIONS

***Elections and Primaries Generally: Eliminate Nonpartisan Primaries Except for Municipal Offices; Provide that Nonpartisan Elections for Certain County and State Offices Be Held in Conjunction with the General Primary; Provide for Qualifying Time for Certain Nonpartisan Elections; Provide for the Form of Nonpartisan Election Ballots; Specify the Circumstances under Which Election Superintendents May Open Absentee Ballots; Change the Method of Removing Deceased Voters from the Electors List; Authorize the Secretary of State to Obtain the Names of Georgians Who Die in Other States; Provide for the Transmission of Names of Persons Who Have Been Convicted of Felonies to Registrars for Removal from the Electors List; Authorize the Constitutional Amendments Publication Board to Determine Short Titles or Headings for Proposed Constitutional Amendments; Authorize the Secretary of State to Put Such Short Titles on Ballots; Require the Secretary of State to Print the Proposed Constitutional Amendments in the Order Specified by the Constitutional Amendments Publication Board; Provide for Uniform Election Equipment Throughout the State; Provide for the Education of Voters, Election Officials, and Post Officers in the Operation of Election Equipment; Authorize the Secretary of State to Conduct a Pilot Project to Test Electronic Recording Voting Systems During the 2001 Municipal Elections; Create the Twenty-First Century Voting Commission; Provide for the Composition, Duties, and Compensation of Such Commission; Provide Times for Certification of Election Results***

CODE SECTIONS: O.C.G.A. §§ 15-7-21, 20-2-56, 21-2-130 to -135, -138, -139, -150, -151, -155, -231, -270, -284.1, -285, -285.1 (amended), 21-2-300, -301 (new), 21-2-325, -386, -408, -480, -493, -495, -499, 50-12-101 (amended)

BILL NUMBER: SB 213

ACT NUMBER: 166

GEORGIA LAWS: 2001 Ga. Laws 269

SUMMARY: The Act eliminates the nonpartisan primary for state and county officials and provides that candidates will be elected in a

nonpartisan election held in conjunction with the general primary. The Act allows for the outer envelope of absentee ballots to be opened before the polls close on election day, and provides for opening of inner envelopes in special circumstances. The Act requires the counties to transmit a list of people who have died, been declared mentally incompetent, or been convicted of felonies to the Secretary of State. The Secretary of State will remove the names of deceased persons from the list of electors, and send the lists of mentally incompetent people and felons to the appropriate counties for removal from the elector lists. This Act also allows the Constitutional Amendments Publication Board to create a fifteen-word title for any proposed constitutional amendments, and put the caption on the ballot along with the full text of the amendment. The Act also creates a Twenty-First Century Voting Commission, which will study different election methods and machines, and will determine which method and machine should be implemented throughout Georgia. The Secretary of State is authorized to conduct pilot projects of new voting machines in the 2001 municipal elections. By the July 2004 primary election, each county will be provided with the new election machines, at state expense.

EFFECTIVE DATE:

July 1, 2001

## History

The 2000 presidential election brought the attention of the nation to the lack of integrity in current voting systems.<sup>1</sup> The controversy centered around Florida, as Florida's electors would determine the next president, and the margin between the candidates was less than one thousand votes.<sup>2</sup> The State struggled to interpret its laws to be fair to the voters and both candidates.<sup>3</sup> For example, the Florida Supreme Court required hand recounts in all Florida counties, so that each vote would count equally.<sup>4</sup> Eventually, the United States Supreme Court stepped in and held that differences in hand counting standards created an equal protection problem.<sup>5</sup>

The problems in Florida included the confusing nature of the ballots<sup>6</sup> and mechanical problems with the voting machines.<sup>7</sup> These sorts of problems happen in any election, but the turmoil in the 2000 election caused the nation to consider ways to improve the election process.<sup>8</sup> Georgia began to look at its own voting systems and laws to try to prevent what happened in Florida from happening here.<sup>9</sup> The United States Congress also began to look for ways to improve the integrity of elections, including providing funding to states for improved equipment.<sup>10</sup> As the Georgia General Assembly came into session, many believed that reforms in Georgia election laws were necessary to prevent what happened in Florida from happening in Georgia.<sup>11</sup>

1. See, e.g., Ed Timms, *Making of a President: Courts, Chads, and Chaos*, DALLAS MORNING NEWS, Dec. 14, 2000, at 29A.

2. See, e.g., *Judge Rejects New Election for Palm Beach County; Even if Butterfly Ballots Were Faulty, A Revote Would Be Illegal, He Rules*, ST. LOUIS POST-DISPATCH, Nov. 21, 2000, at A1 [hereinafter *Butterfly Ballots*].

3. See, e.g., *Gore v. Harris*, 772 So. 2d 1243 (Fla. 2000), *rev'd sub nom. Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000).

4. See *id.* at 1255.

5. See *Bush v. Gore*, 121 S. Ct. at 530.

6. See, e.g., *Butterfly Ballots*, *supra* note 2, at A1.

7. See, e.g., Tina Cassidy, *Election 2000/The Democrats; Data Collected on Faultiness of Mechanisms*, BOSTON GLOBE, Nov. 26, 2000, at A31.

8. See Eric Bailey & Jeffrey L. Rabin, *Tally: In Any Polling, There Can Be Glitches. But When a Contest Is As Incredibly Close As the Florida Presidential Race, the Level of Scrutiny of the Count Rises Enormously*, L.A. TIMES, Nov. 10, 2000, at A28.

9. See, e.g., Colin Campbell, *Election Lessons from Florida Should Count for Something Here*, ATLANTA J. CONST., Nov. 19, 2000, at C2; Duane D. Stanford, *Georgia's Vote: Punch-Card Glitches Sound Familiar in Metro Atlanta*, ATLANTA CONST., Nov. 17, 2000, at A11.

10. See, e.g., Tom Baxter, *Reform Legislation Sprouting Just in Time*, ATLANTA CONST., Mar. 20, 2001, at A4; Editorial, *Eliminate Confusion in Voting Booth*, ATLANTA J., Dec. 6, 2000, at A14.

11. See Telephone Interview with Rep. Tom Shanahan, House District No. 10 (Apr. 2, 2001) [hereinafter *Shanahan Interview*]; Secretary of State, *THE 2000 ELECTION: A WAKE-UP CALL FOR REFORM*

As a result of the statewide groundswell, Secretary of State Cathy Cox published a report on Georgia election procedures including suggestions for reforms.<sup>12</sup> In writing her report, Secretary Cox looked at the statistics from the Georgia presidential election, and interviewed many different officials, party representatives, and Georgia voters.<sup>13</sup> The Secretary concluded that major election reform in Georgia was necessary to make the system of counting votes more accurate and to restore the confidence of voters in the voting system.<sup>14</sup> Secretary Cox's report included several suggestions for improvement, many of which were incorporated into SB 213.<sup>15</sup>

Secretary Cox proposed a "state-wide uniform electronic voting initiative" that would research and propose a new uniform electronic voting system.<sup>16</sup> To help the counties pay for this change, she proposed that local officials receive significant support from the state budget to help with voting machine purchase and maintenance.<sup>17</sup> The Secretary also suggested several ways to shorten the ballot and make it clearer, including eliminating the nonpartisan candidates from the general election ballot and including a short title along with the constitutional amendments.<sup>18</sup>

Secretary Cox also proposed early voting as a way to shorten election lines and reduce strain on election workers.<sup>19</sup> The Secretary also suggested that the Office of the Secretary of State should be responsible for removing the names of deceased voters from Georgia's rolls.<sup>20</sup>

A former aide of Secretary Cox drafted SB 213 in the Legislative Committee.<sup>21</sup> The Secretary followed the bill closely, and lobbied for its

AND CHANGE 2 (Feb. 2, 2001), at [www.sos.state.ga.us/pressrel/2000\\_election\\_report.html](http://www.sos.state.ga.us/pressrel/2000_election_report.html) [hereinafter Secretary of State]; Audio Recording of Senate Proceedings, Mar. 7, 2001 (remarks by Sen. Jack Hill), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio].

12. See Secretary of State, *supra* note 11, at 1-2.

13. See *id.* at 2-3.

14. See *id.* at 2.

15. Compare Secretary of State, *supra* note 11, with SB 213, as introduced, 2001 Ga. Gen. Assem.

16. See Secretary of State, *supra* note 11, at 26. Secretary Cox did not recommend that Georgia go to a uniform opti-scan system, as the undervotes in counties using opti-scan systems were just as high as the undervotes in counties using the other voting systems. See *id.*

17. See *id.* at 27.

18. See *id.* This would shorten the general election ballot because the races are always decided in the nonpartisan primary stage, and then the candidates appear uncontested in the general election. See Senate Audio, *supra* note 11 (remarks by various senators in support of SB 213).

19. See Secretary of State, *supra* note 1, at 28. The Secretary of State has been seeking this change for several years. See *id.* Early voting would allow for voters to cast their votes in person during a window of time before election day. See *id.*

20. See *id.*

21. See Telephone Interview with Sen. Jack Hill, Senate District No. 4 (Apr. 2, 2001) [hereinafter Hill

passage through the legislature.<sup>22</sup> Secretary Cox was proud of its passage, and stated that Georgia had moved to the forefront of election reform.<sup>23</sup>

## *SB 213*

### *Introduction*

Senator Jack Hill of the 4th District sponsored SB 213.<sup>24</sup> Senator Hill introduced the bill on the Senate floor on February 20, 2001.<sup>25</sup> The Senate assigned the bill to the State & Local Governments Operation Committee, which favorably reported the bill, as substituted.<sup>26</sup> The Senate passed the bill with the Committee substitute and eleven floor amendments on March 7, 2001, by a vote of 50 to 5.<sup>27</sup> The bill was introduced in the House by Representative Tom Shanahan of the 10th District on March 8, 2001.<sup>28</sup> The House assigned SB 213 to the House Governmental Affairs Committee, which favorably reported it, as substituted, on March 19, 2001.<sup>29</sup> The House adopted the Committee substitute, with two floor amendments, and passed the bill on March 19, 2001 by a vote of 164 to 1.<sup>30</sup> SB 213 returned to the Senate on March 21, 2001, and the Senate agreed to the House version.<sup>31</sup> The Georgia General Assembly forwarded the bill to Governor Roy Barnes on April 4, 2001, who signed SB 213 into law on April 18, 2001.<sup>32</sup>

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Interview].

22. See Shanahan Interview, *supra* note 11; Press Release, Secretary Cox Hails Final Passage of Her Election Reform Package—Georgia First in Nation to Mandate Uniform Voting System by 2004 (Mar. 22, 2001), at <http://www.sos.state.ga.us/pressrel/pr032201.htm> [hereinafter Press Release].

23. See Press Release, *supra* note 22.

24. See SB 213, as introduced, 2001 Ga. Gen. Assem.

25. See State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

26. See *id.*

27. See Georgia Senate Voting Record, SB 213 (Mar. 7, 2001); State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

28. See State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

29. See *id.*

30. See Georgia House of Representatives Voting Record, SB 213 (Mar. 19, 2001); State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

31. See State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

32. See 2001 Ga. Laws 269, § 28, at 294; see also David Pendered, *Governor Signs Bill for Georgia to Use Touch-Screen Voting*, ATLANTA J. CONST., Apr. 19, 2001, at F3.



*Consideration by the Senate State and Local Governments  
Operation Committee*

After introduction, the Senate assigned the bill to its State and Local Governments Operation Committee.<sup>33</sup> The Committee favorably reported the bill, as substituted, on March 1, 2001.<sup>34</sup> The State and Local Governments Operation Committee Substitute amended Code section 21-2-150 to change the primary election date to the first Tuesday in August, rather than the third Tuesday in August.<sup>35</sup> The amendment also added language to Code section 25-2-301, and provided that in appointing members to the Commission, the Speaker of the House, the President of the Senate, and the Governor must ensure representation from each political party.<sup>36</sup> This language was added to ensure equal participation between the parties in the bipartisan Voting Commission.<sup>37</sup>

In the original bill, the period before election day when electors would be allowed to cast their votes was termed the "open absentee voting period."<sup>38</sup> The Committee amendment changed the language to "early voting period" throughout the bill.<sup>39</sup> The Committee amendment also returned some of the absentee election provisions to the original law.<sup>40</sup> Therefore, it amended Code section 21-2-380 to allow an elector to vote in absentia if he is absent from the precinct on election day, instead of requiring that he be absent from the county for the entire early voting period.<sup>41</sup> Code section 21-2-380 was also amended to allow an individual to vote absentee if he has official acts or duties in connection with the election.<sup>42</sup>

The Committee substitute also reduced the early voting period from fifteen days to eight days by amending Code sections 21-2-380 and 21-2-385.<sup>43</sup> Section 21-2-328.1 was amended to provide that the polls open for early voting will be open until 7:00 P.M. on weekdays, and a

33. See State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

34. See *id.*

35. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem. Originally, the authors of the bill set the election date as the third Tuesday in August because they hoped that primary election turnout would improve if school was in session. See Senate Audio, *supra* note 11 (remarks by Sen. Jack Hill).

36. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

37. See Senate Audio, *supra* note 11 (remarks by Sen. Jack Hill).

38. See SB 213, as introduced, 2001 Ga. Gen. Assem.

39. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

40. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

41. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

42. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

43. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

reasonable time—not less than four hours—on the Saturday before the election.<sup>44</sup> The section also eliminated the requirement that the early voting precincts be open for longer periods of time in more populous counties.<sup>45</sup> The purpose of these amendments was to make it easier for counties to comply with the early voting provisions.<sup>46</sup> The Committee also amended Code section 21-2-385 to allow for municipalities to refuse early voting in any election not held jointly with county, state, or federal elections.<sup>47</sup>

The Committee alterations also changed Code section 21-2-386, to provide procedures for the election superintendent to gain permission to open the inner envelope of absentee ballots before the polls close.<sup>48</sup>

The Committee also changed the recount provisions by adding an amendment to section 21-2-495, so that if a losing candidate desires a recount, the recount will be performed in all of the counties where the electors voted for his office.<sup>49</sup>

### *Senate Passage and Floor Amendments*

The Senate passed SB 213 by a vote of 50 to 5, after adoption of the Committee substitute and several floor amendments on March 7, 2001.<sup>50</sup> The bill was then referred to the House on March 8, 2001.<sup>51</sup>

Eleven amendments to the bill passed.<sup>52</sup> Senator Jack Hill's amendment changed Code section 21-2-150 to return the primary date to the Tuesday in July, as the senators were unable to agree on a new date.<sup>53</sup> Senator Hill's amendment also changed Code section 21-2-301 to require that each machine used in a future election would have an independent audit trail for each vote cast.<sup>54</sup> This provision was added to aid in recounts and provide an additional safety measure in the case of machine malfunction.<sup>55</sup> Senator Hill's amendment also corrected two

44. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

45. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

46. See Senate Audio, *supra* note 11 (remarks by Sen. Jack Hill).

47. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

48. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

49. Compare SB 213, as introduced, 2001 Ga. Gen. Assem., with SB 213 (SCS), 2001 Ga. Gen. Assem.

50. See Georgia Senate Voting Record, SB 213 (Mar. 7, 2001); State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

51. See State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

52. See Georgia Senate Voting Record, SB 213 (Mar. 7, 2001).

53. See Senate Audio, *supra* note 11 (remarks by Sen. Jack Hill). Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

54. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

55. See Hill Interview, *supra* note 21; Senate Audio, *supra* note 11 (remarks by Sen. Jack Hill).

clerical errors by striking the amendments to Code section 21-2-388, so that it would be consistent with the Committee substitution to Code section 21-2-380, and by correcting errors in Code section 21-2-301.<sup>56</sup>

Senator Horacena Tate's amendment to section 21-2-101 provided that all public colleges, universities, and technical schools must offer one hour of course credit to any undergraduate student who serves as a poll officer.<sup>57</sup> This amendment was intended to encourage young people to participate in the election process and to alleviate the shortage of poll workers.<sup>58</sup> Some senators expressed concern that the Legislature should not force the colleges to offer a course, and that everyone should be encouraged to serve as poll workers, not just students.<sup>59</sup>

Senator Eric Johnson proposed several amendments, some of which passed.<sup>60</sup> Senator Johnson's amendment to section 21-2-285 provided that only the names of the candidates, and not the names of the electors, would appear on a presidential election ballot.<sup>61</sup> This amendment was introduced to make the general election ballot shorter.<sup>62</sup> Senator Johnson's amendment to Code section 21-2-300 provided that the universal voting system would be in place by July 2004, for the primaries, instead of November 2004.<sup>63</sup> The Senator's amendment to section 21-2-380 restored all of the permissible reasons for voting absentee, which the original bill struck from the law.<sup>64</sup>

Senator Rusty Paul also introduced several floor amendments, some of which passed.<sup>65</sup> Senator Paul's amendments changed Code section 21-2-386 to provide that the inner envelopes could not be opened before 3:00 P.M., even with permission, to reduce the possibility of fraud.<sup>66</sup> Senator Paul's amendments also changed Code section 21-2-382.1 to require that the early voting polls be open until 8:00 P.M. on weekdays

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56. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

57. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

58. See Senate Audio, *supra* note 11 (remarks by Sen. Horacena Tate).

59. See *id.* (remarks by Sen. Eric Johnson).

60. See *id.*; Georgia Senate Voting Record, SB 213 (Mar. 7, 2001).

61. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

62. See Senate Audio, *supra* note 11 (remarks by Sen. Eric Johnson).

63. See *id.* Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

64. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

65. See Georgia Senate Voting Record, SB 213 (Mar. 7, 2001).

66. See *id.* Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

rather than 7:00 P.M.<sup>67</sup> The Senator's amendments also corrected clerical errors in sections 21-2-388 and 21-2-381.<sup>68</sup>

Senator Bill Stephens' floor amendment increased the early voting period from eight days to fifteen days by altering Code sections 21-2-385 and 21-2-380.<sup>69</sup>

Senator Mike Crotts offered several floor amendments, one of which passed.<sup>70</sup> Senator Crotts' amendment added changes to Code sections 21-2-493 and 21-2-499 to require that the superintendent of elections certify results within seven days of a local or statewide election and within fourteen days of a presidential election.<sup>71</sup> The Senator's amendment also provided that the Governor will certify presidential election results within fifteen days of a presidential election.<sup>72</sup>

Eight floor amendments were proposed but failed to garner a requisite vote.<sup>73</sup> For example, Senator Joe Burton's amendment would have amended Code section 21-2-417 to require that the electors present picture identification at the polls.<sup>74</sup> Several senators objected to the amendment because they believed that it was beyond the scope of SB 213 and should be debated separately.<sup>75</sup>

Senator Rusty Paul introduced an amendment that would have modified Code section 21-2-300 to require that the new voting machines produce a paper receipt that the elector could review.<sup>76</sup> This amendment was opposed because it might increase costs, and would limit the Commission's choice of election equipment.<sup>77</sup> Senator Paul also offered a floor amendment that would have altered Code section 21-2-414 to increase the distance that campaigners could stand from the polls.<sup>78</sup>

67. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

68. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem. The section of the bill dealing with Code section 21-2-388 had already been deleted in a prior floor amendment. See *supra* note 56 and accompanying text.

69. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

70. See Georgia Senate Voting Record, SB 213 (Mar. 7, 2001).

71. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

72. Compare SB 213 (SCS), 2001 Ga. Gen. Assem., with SB 213 (SCSFA), 2001 Ga. Gen. Assem.

73. See Georgia Senate Voting Record, SB 213 (Mar. 7, 2001).

74. See Failed Senate Floor Amendment 1 to SB 213, introduced by Sen. Joe Burton, Mar. 7, 2001.

75. See Senate Audio, *supra* note 11 (remarks by senators in opposition to proposed Burton amendment).

76. See Failed Senate Floor Amendment 9 to SB 213, introduced by Sen. Rusty Paul, Mar. 7, 2001.

77. See Senate Audio, *supra* note 11 (remarks by senators opposing proposed Paul amendment); Hill Interview, *supra* note 21.

78. See Failed Senate Floor Amendment 22 to SB 213, introduced by Sen. Rusty Paul, Mar. 7, 2001.

Senator Mike Crotts also offered several amendments which failed.<sup>79</sup> Senator Crotts' amendments would have altered Code section 21-2-300 to require all counties to implement an op-scan voting system, and to eliminate the Commission.<sup>80</sup> The Senator offered this amendment to reduce the cost of voting changes, and to make it easier for people to vote.<sup>81</sup> It failed because the Secretary of State found that the op-scan system is no more accurate than other systems, and the Commission could still recommend an op-scan system if it felt that was best.<sup>82</sup> Senator Crotts also offered an amendment which would have amended Code section 21-2-382.1 to require that the early voting period on the Saturday before the election be from 10:00 A.M. to 2:00 P.M. instead of a simple four hour minimum.<sup>83</sup> The Senator stated that this would make the voting times consistent on that Saturday and reduce voter confusion.<sup>84</sup> Some senators opposed the amendment because they felt that the local officials were in the best position to determine voting times.<sup>85</sup> Senator Crotts also offered an amendment that would have altered Code section 21-2-385, so that no ballot in the presidential election could be counted until all nationwide polls had closed.<sup>86</sup> The Senator introduced this amendment to prevent the press from reporting early returns on elections and creating some of the problems that occurred in the 2000 election.<sup>87</sup> The senators opposing this amendment felt that it did not make sense for Georgia to be the only state that does not start counting, and that it would force the poll workers to count into the middle of the night.<sup>88</sup>

Senator Thomas Price introduced a floor amendment which would have amended Code section 50-12-101 to require the General Assembly to approve the fifteen-word title for the constitutional amendments.<sup>89</sup> The Senator offered this amendment to give the General Assembly the authority to phrase the title of the amendment, as the title would likely affect its passage.<sup>90</sup> Other senators opposed this amendment as

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79. See Senate Audio, *supra* note 11 (remarks by Sen. Mike Crotts).

80. See Failed Senate Floor Amendment 15 to SB 213, introduced by Sen. Mike Crotts, Mar. 7, 2001.

81. See Senate Audio, *supra* note 11 (remarks by Sen. Mike Crotts).

82. See Secretary of State, *supra* note 11, at 26; Hill Interview, *supra* note 21.

83. See Failed Senate Floor Amendment 18 to SB 213, introduced by Sen. Mike Crotts, Mar. 7, 2001.

84. See Senate Audio, *supra* note 11 (remarks by Sen. Mike Crotts).

85. See *id.* (remarks by Sen. Jack Hill).

86. See Failed Senate Floor Amendment 24 to SB 213, introduced by Sen. Mike Crotts, Mar. 7, 2001.

87. See Senate Audio, *supra* note 11 (remarks by Sen. Mike Crotts).

88. See Senate Audio, *supra* note 11 (remarks by senators opposing the Crotts amendment).

89. See Failed Senate Floor Amendment 19 to SB 213, introduced by Sen. Thomas Price, Mar. 7, 2001.

90. See Senate Audio, *supra* note 11 (remarks by Sen. Thomas Price).

unnecessary since the General Assembly is free to suggest a fifteen-word title for the constitutional amendments, and constitutional amendments must have broad bipartisan support to get on the ballot; accordingly, all of the titles will likely be phrased in sufficiently affirmative wording.<sup>91</sup> In addition, the amendment opposition stated that the purpose of the fifteen-word title is to remind the voters of the amendments that they have already read, and the complete amendment would still appear on the ballot.<sup>92</sup> Senator Price offered another amendment which would have changed Code section 21-2-137 to apply it to political parties as well as political bodies.<sup>93</sup> Some senators objected to the proposed amendment because they felt it was beyond the scope of the bill.<sup>94</sup>

*Consideration by the House Committee on Governmental Affairs.*

The House Committee on Governmental affairs favorably reported SB 213, as substituted, on March 13, 2001.<sup>95</sup>

The Committee substitute deleted the amendment to Code section 21-2-101 requiring public universities to offer college course credit for working the polls.<sup>96</sup> However, the Committee substitute also amended section 21-2-301 to allow the Voting Commission to work with the Boards of Regents and the Department of Education to seek other incentives for students to be poll workers.<sup>97</sup>

The Committee also amended Code sections 21-2-132,-133,-138, -139,-151,-285.1, and -325 to specify whether the particular, enumerated procedures for nonpartisan elections apply to counties with pre-existing law covering nonpartisan elections, and to provide specific procedures when there is pre-existing law.<sup>98</sup> Generally, these amendments stated that if there is pre-existing law, and in certain other circumstances, the

91. *See id.* (remarks by senators opposing the amendment); Hill Interview, *supra* note 21.

92. *See* Senate Audio, *supra* note 11 (remarks by senators opposing the amendment); Hill Interview, *supra* note 21.

93. *See* Failed Senate Floor Amendment to SB 213, introduced by Sen. Thomas Price, Mar. 7, 2001. Section 21-2-137 prevents candidates from qualifying as one political body and then running as a different political body or as an independent. *See* 1998 Ga. Laws 295, § 1, at 343 (codified at O.C.G.A. § 21-2-137 (Supp. 2001)).

94. *See* Senate Audio, *supra* note 11 (remarks by senators opposing the amendment).

95. *See* State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001.

96. *Compare* SB 213 (SCSFA), 2001 Ga. Gen. Assem., *with* SB 213 (HCS), 2001 Ga. Gen. Assem.

97. *Compare* SB 213 (SCSFA), 2001 Ga. Gen. Assem., *with* SB 213 (HCS), 2001 Ga. Gen. Assem.

98. *Compare* SB 213 (SCSFA), 2001 Ga. Gen. Assem., *with* SB 213 (HCS), 2001 Ga. Gen. Assem.

nonpartisan election may be held in conjunction with the general election rather than the primary election.<sup>99</sup>

The Committee amendment also eliminated the early voting provisions from the bill, as well as the related absentee ballot provisions.<sup>100</sup> The Secretary of State asked that this provision be eliminated in the Committee meeting because there was a great deal of resistance to early voting in the House of Representatives, especially from rural representatives.<sup>101</sup> Opponents of early voting argued that it might lead to fraud, increased campaign expense, and increased expense and workload for poll workers.<sup>102</sup> The proponents of the bill were afraid that this provision would stop the bill from passing.<sup>103</sup> Therefore, the Committee substitute eliminated the amendments to sections 21-2-215, -230, -380, -381, -382, -382.1, -385 and -573.<sup>104</sup>

The Committee further amended section 21-2-285 to eliminate the provision that the electors for the president and vice-president would be removed from the ballot.<sup>105</sup> The Committee removed this provision due to concern that the Georgia Constitution may require that the elector's names appear on the ballot.<sup>106</sup>

The Committee amendment also changed 21-2-386 to clarify the procedures for gaining permission to open the inner envelope of absentee ballots before the polls have closed.<sup>107</sup>

### *House Passage and Floor Amendments*

The House passed SB 213, as substituted, and with floor amendments on March 19, 2001, by a vote of 164 to 1.<sup>108</sup> Representative Tom Shanahan introduced the bill onto the floor of the House.<sup>109</sup> Six amendments were offered onto the floor of the House and two passed.<sup>110</sup>

99. Compare SB 213 (SCSFA), 2001 Ga. Gen. Assem., with SB 213 (HCS), 2001 Ga. Gen. Assem.  
 100. Compare SB 213 (SCSFA), 2001 Ga. Gen. Assem., with SB 213 (HCS), 2001 Ga. Gen. Assem.  
 101. See Shanahan Interview, *supra* note 11; Audio Recording of House Proceedings, Mar. 19, 2001 (remarks by Rep. Tom Shanahan), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio].

102. See Senate Audio, *supra* note 11 (remarks by Sen. Eric Johnson).

103. See Shanahan Interview, *supra* note 11.

104. Compare SB 213 (SCSFA), 2001 Ga. Gen. Assem., with SB 213 (HCS), 2001 Ga. Gen. Assem.

105. Compare SB 213 (SCSFA), 2001 Ga. Gen. Assem., with SB 213 (HCS), 2001 Ga. Gen. Assem.

106. See Hill Interview, *supra* note 21.

107. Compare SB 213 (SCSFA), 2001 Ga. Gen. Assem., with SB 213 (HCS), 2001 Ga. Gen. Assem.

108. See State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001; Georgia House of Representatives Voting Record, SB 213 (Mar. 19, 2001).

109. See House Audio, *supra* note 101 (remarks by Rep. Tom Shanahan).

110. See Georgia House of Representatives Voting Record, SB 213 (Mar. 19, 2001).

The amendments that passed were the Stancil and Shanahan amendments.<sup>111</sup> The Stancil amendment changed Code section 21-2-301 to provide that the Voting Commission must hold at least one meeting in north Georgia, outside of Atlanta, one meeting in central Georgia, and one meeting in south Georgia.<sup>112</sup> The Shanahan amendment changed Code section 21-2-301 to clarify the language regarding how the Commission members are to be appointed, and require that the Secretary of State ensure that each party has equal representation.<sup>113</sup> Representative Shanahan's amendment also corrected clerical errors in Code section 21-2-131 and 21-2-231.<sup>114</sup>

The failed Joyce amendment would have amended Code sections 20-2-170 and 21-2-180, and would have reduced the number of signatures necessary for an independent candidate to get on the ballot.<sup>115</sup> Representative Joyce introduced this amendment to make it easier for independents and members of political bodies to run for election.<sup>116</sup> However, there was a great deal of resistance to this amendment, as representatives were concerned that it would clutter up the ballot, would be unfair to candidates who had to participate in the primary, and would weaken political parties.<sup>117</sup> In addition, the bill supporters felt that this amendment would jeopardize the passage of the bill, and might cause the Governor to veto it.<sup>118</sup>

The failed Willard amendment would have modified Code section 21-2-248.1 to return to previous law and require a run-off in the event that a candidate does not receive a majority of the votes cast, as opposed to a plurality.<sup>119</sup>

The failed Mangham amendment was designed to restore the early voting provisions.<sup>120</sup> The amendment was defeated because of

111. *See id.*

112. *Compare* SB 213 (HCS), 2001 Ga. Gen. Assem., *with* SB 213 (HCSFA), 2001 Ga. Gen. Assem.

113. *Compare* SB 213 (HCS), 2001 Ga. Gen. Assem., *with* SB 213 (HCSFA), 2001 Ga. Gen. Assem.

114. *Compare* SB 213 (HCS), 2001 Ga. Gen. Assem., *with* SB 213 (HCSFA), 2001 Ga. Gen. Assem.

115. *See* Failed House Floor Amendment to SB 213, introduced by Rep. Brian Joyce, Mar. 19, 2001. The Joyce amendment originally reduced the requirement to get on the ballot in local elections to allow a candidate to get on the ballot with signatures from three percent of the total electorate, but was changed by Rep. Earl Ehrhart's floor amendment. *See id.*

116. *See* House Audio, *supra* note 101 (remarks by Rep. Brian Joyce).

117. *See id.* (remarks by Reps. Mike Snow, Anne Mueller, and Kathy Ashe).

118. *See* Shanahan Interview, *supra* note 11.

119. *See* Failed House Floor Amendment to SB 213, introduced by Rep. Wendell Willard, Mar. 19, 2001.

120. *See* Failed House Floor Amendment to SB 213, introduced by Rep. Randal Mangham, Mar. 19, 2001.



substantial resistance to early voting and the fact that Secretary Cox herself asked that the early voting provisions be removed.<sup>121</sup>

The Reichert amendment would have changed Code section 21-2-493 to allow a court to waive the deadline for certification of results.<sup>122</sup> Representative Reichert offered this amendment to give the Election Board the flexibility it might need in an emergency.<sup>123</sup> However, the amendment failed because some Representatives were opposed to giving new power to the courts.<sup>124</sup>

The Twiggs amendment would have amended Code section 21-2-301 to provide that each political body receiving five percent or more of the votes would be entitled to a seat on the Voting Commission.<sup>125</sup> The House returned the bill to the Senate, and on March 21, 2001, the Senate unanimously approved the House amendments.<sup>126</sup>

### *The Act*

The Act amends Code sections 15-7-21,<sup>127</sup> 20-2-56,<sup>128</sup> 21-2-130,<sup>129</sup> 134,<sup>130</sup> -135,<sup>131</sup> -150,<sup>132</sup> -155,<sup>133</sup> -270,<sup>134</sup> and -408<sup>135</sup> to eliminate references to nonpartisan primaries, and apply those provisions to nonpartisan elections. The Act amends section 21-2-131 to require that

121. See House Audio, *supra* note 101 (remarks by Rep. Gene Callaway).

122. See Failed House Floor Amendment to SB 213, introduced by Rep. Robert Reichert, Mar. 19, 2001.

123. See House Audio, *supra* note 101 (remarks by Rep. Robert Reichert).

124. See *id.* (remarks by senators opposing the Reichert amendment).

125. See Failed House Floor Amendment to SB 213, introduced by Rep. Ralph Twiggs, Mar. 19, 2001.

126. See State of Georgia Final Composite Status Sheet, SB 213, Mar. 21, 2001; Georgia Senate Voting Record, SB 213 (Mar. 21, 2001).

127. Compare 1990 Ga. Laws 349, § 1, at 349-50 (formerly found at O.C.G.A. § 15-7-21 (1999)), with O.C.G.A. § 15-7-21 (2001).

128. Compare 1998 Ga. Laws 295, § 1, at 504 and 1998 Ga. Laws 1027, §1, at 1028 (formerly found at O.C.G.A. § 20-2-56 (1996)), with O.C.G.A. § 20-2-56 (2001).

129. Compare 1998 Ga. Laws 295, § 1, at 328 (formerly found at O.C.G.A. § 21-2-130 (1998)), with O.C.G.A. § 21-2-130 (Supp. 2001).

130. Compare 1998 Ga. Laws 295, § 1, at 337-41 (formerly found at O.C.G.A. § 21-2-134 (1998)), with O.C.G.A. § 21-2-134 (Supp. 2001).

131. Compare 1999 Ga. Laws 52, § 7, at 57-58 (formerly found at O.C.G.A. § 21-2-135 (1998)), with O.C.G.A. § 21-2-135 (Supp. 2001).

132. Compare 1998 Ga. Laws 295, § 1, at 344-45 (formerly found at O.C.G.A. § 21-2-150 (1998)), with O.C.G.A. § 21-2-150 (Supp. 2001).

133. Compare 1998 Ga. Laws 295, § 1, at 351-52 (formerly found at O.C.G.A. § 21-2-155 (1998)), with O.C.G.A. § 21-2-155 (Supp. 2001).

134. Compare 1998 Ga. Laws 295, § 1, at 397 (formerly found at O.C.G.A. § 21-2-270 (1998)), with O.C.G.A. § 21-2-270 (Supp. 2001).

135. Compare 1998 Ga. Laws 1231, § 17, at 1252, and 1998 Ga. Laws 295, §1, at 441-42 (formerly found at O.C.G.A. § 21-2-408 (1998)), with O.C.G.A. § 21-2-408 (Supp. 2001).

a candidate pay the qualifying fee thirty-five days before the election instead of twenty days.<sup>136</sup> The Act further amends section 21-2-132 to apply the notice of candidacy provisions to nonpartisan elections unless the office is judicial and prior law allowed a nonpartisan election.<sup>137</sup> The Act modifies 21-2-133 in the same way as it modified 21-2-132.<sup>138</sup> Section 21-2-138 is amended to require that nonpartisan elections for judicial offices occur during the general primary, except when prior law indicated that the judicial elections would occur during the general election.<sup>139</sup> The Act further amends section 21-2-139 to require that those areas with local acts requiring a nonpartisan primary to conduct their elections in conformity with this chapter.<sup>140</sup> The Act also amends section 21-2-151 to eliminate language requiring nonpartisan primaries for judicial offices, and requiring nonpartisan elections to be held jointly with the general primary unless prior law states otherwise.<sup>141</sup> The Act also amends code section 21-2-285.1, limiting the section's applicability to those offices which previously allowed nonpartisan elections.<sup>142</sup> The Act also amends section 21-2-325 to apply subsection (g) to nonpartisan elections that are held at the same time as general elections; the other amended sections apply to nonpartisan elections held in conjunction with the primary.<sup>143</sup>

Section 21-2-284.1 is amended to apply the previous form of the nonpartisan primary ballot to the nonpartisan election, and to provide that the winner of the nonpartisan election be considered duly elected to the office.<sup>144</sup> The Act further amends section 21-2-284.1 to provide write-in instructions at the top of the nonpartisan election ballot, and to

136. Compare 1999 Ga. Laws 52, § 4, at 54-55 (formerly found at O.C.G.A. § 21-2-131 (1998)), with O.C.G.A. § 21-2-131 (Supp. 2001).

137. Compare 1999 Ga. Laws 52, § 5, at 55-56, and 1998 Ga. Laws 295, § 1, at 331-336 (formerly found at O.C.G.A. § 21-2-132 (1998)), with O.C.G.A. § 21-2-132 (Supp. 2001).

138. Compare 1999 Ga. Laws 52, § 6, at 56-57, (formerly found at O.C.G.A. § 21-2-133 (1998)), with O.C.G.A. § 21-2-133 (Supp. 2001).

139. Compare 1998 Ga. Laws 295, § 1, at 343-44 (formerly found at O.C.G.A. § 21-2-138 (1998)), with O.C.G.A. § 21-2-138 (Supp. 2001).

140. Compare 1998 Ga. Laws 295, § 1, at 344 (formerly found at O.C.G.A. § 21-2-139 (1998)), with O.C.G.A. § 21-2-139 (Supp. 2001).

141. Compare 1998 Ga. Laws 295, § 1, at 345 (formerly found at O.C.G.A. § 21-2-151 (1998)), with O.C.G.A. § 21-2-151 (Supp. 2001).

142. Compare 1998 Ga. Laws 295, § 1, at 402 (formerly found at O.C.G.A. § 21-2-285.1 (1998)), with O.C.G.A. § 21-2-285.1 (Supp. 2001).

143. Compare 1998 Ga. Laws 295, § 1, at 412-13 (formerly found at O.C.G.A. § 21-2-325 (1998)), with O.C.G.A. § 21-2-325 (Supp. 2001).

144. Compare 1998 Ga. Laws 295, § 1, at 399-400 (formerly found at O.C.G.A. § 21-2-284.1 (1998)), with O.C.G.A. § 21-2-284.1 (Supp. 2001).

provide a space for write-in candidates.<sup>145</sup> This Code section is also amended to provide that the candidate need only gain a plurality of votes instead of a majority to avoid a run-off, and that in a run-off, the winner will be the candidate with the highest number of votes.<sup>146</sup>

The Act also amends section 21-2-131 by rearranging the paragraphs and by adding language which requires the Secretary of State to remove the names of deceased people from the list of electors, and authorizes her to seek names of deceased Georgia electors from other states.<sup>147</sup>

The Act also amends section 21-2-285 to provide that the proposed constitutional amendments will appear in an order determined by the Constitutional Amendments Publication Board, and that the amendments will have a short title as provided for in Code section 50-12-101.<sup>148</sup> Section 21-2-480 is amended to require the same thing for op-scan ballots.<sup>149</sup>

The Act also adds two new Code sections, 21-2-300 and 21-2-301.<sup>150</sup> Section 21-2-300 mandates that the state will provide uniform voting equipment to the counties by July 2004 and that each county will be responsible for equipment set-up and maintenance.<sup>151</sup> This section also provides that the Secretary of State will be responsible for a program to educate people on the use of the new equipment, and that the counties will bear the costs of participating in the program.<sup>152</sup> Section 21-2-301 authorizes the Secretary of State to conduct a pilot project to evaluate different electronic voting systems during the 2001 elections, and provides that the pilot systems must meet the requirements of Article 9 and have an independent audit trail.<sup>153</sup> The systems will be furnished to the counties, and the same type of system must be used in all precincts within the municipality, unless there is an emergency, in which case the Secretary can direct the use of any authorized method.<sup>154</sup>

145. Compare 1998 Ga. Laws 295, § 1, at 399-400 (formerly found at O.C.G.A. § 21-2-284.1 (1998)), with O.C.G.A. § 21-2-284.1 (Supp. 2001).

146. Compare 1998 Ga. Laws 295, § 1, at 399-400 (formerly found at O.C.G.A. § 21-2-284.1 (1998)), with O.C.G.A. § 21-2-284.1 (Supp. 2001).

147. Compare 1999 Ga. Laws 52, § 10, at 59 (formerly found at O.C.G.A. § 21-2-231 (1998)), with O.C.G.A. § 21-2-231 (Supp. 2001).

148. Compare 1998 Ga. Laws 1231, § 10, at 1239 (formerly found at O.C.G.A. § 21-2-285 (1998)), with O.C.G.A. § 21-2-285 (Supp. 2001).

149. Compare 1999 Ga. Laws 1231, § 18, at 1254 (formerly found at O.C.G.A. § 21-2-480 (1998)), with O.C.G.A. § 21-2-480 (Supp. 2001).

150. See O.C.G.A. §§ 21-2-300, -301 (Supp. 2001).

151. See O.C.G.A. § 21-2-300 (Supp. 2001).

152. See *id.*

153. See *id.* § 21-2-301.

154. See *id.*

Section 21-2-301 also creates a bipartisan Twenty-First Century Voting Commission which will be appointed by several state officials, and must include six county or municipal election officials as well as political representatives.<sup>155</sup> The Commission is authorized to work with the Department of Education and University System to develop incentives to encourage student participation as poll workers, and is required to oversee the pilot projects and report recommendations as to universal voting equipment.<sup>156</sup> The Commission will be abolished at the end of 2002, and will have at least one meeting in north, south, and central Georgia, outside of Atlanta.<sup>157</sup>

The Act also amends section 21-2-386 to add two subsections which provide for special procedures allowing the election superintendent to open the inner envelopes of absentee ballots early.<sup>158</sup> The Act does not allow for any ballots to be counted before 7:00 P.M. on election day.<sup>159</sup>

The Act further amends section 21-2-495 to require that if, in a statewide or federal election, a recount is requested in one county, any subsequent recount will be conducted in all counties.<sup>160</sup> Section 21-2-493 is amended to require that the election results be certified by the superintendent not later than 5:00 P.M. on the seventh day after the election.<sup>161</sup> The Act also amends section 21-2-499 to require the Secretary of State to certify the votes cast for presidential electors no later than the fourteenth day after the election, and to lay them before the Governor, who must certify them by 5:00 P.M. on the fifteenth day.<sup>162</sup>

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155. *See id.*

156. *See id.*

157. *See id.*

158. *Compare* 1999 Ga. Laws 29, § 2, at 35-37 (formerly found at O.C.G.A. § 21-2-386 (1998)), *with* O.C.G.A. § 21-2-386 (Supp. 2001).

159. *Compare* 1999 Ga. Laws 29, § 2, at 35-37 (formerly found at O.C.G.A. § 21-2-386 (1998)), *with* O.C.G.A. § 21-2-386 (Supp. 2001).

160. *Compare* 1998 Ga. Laws 295, § 1, at 473-74 (formerly found at O.C.G.A. § 21-2-495 (1998)), *with* O.C.G.A. § 21-2-495 (Supp. 2001).

161. *Compare* 1998 Ga. Laws 295, § 1, at 471-72 (formerly found at O.C.G.A. § 21-2-493 (1998)), *with* O.C.G.A. § 21-2-493 (Supp. 2001).

162. *Compare* 1998 Ga. Laws 295, § 1, at 476 (formerly found at O.C.G.A. § 21-2-499 (1998)), *with* O.C.G.A. § 21-2-499 (Supp. 2001).

Finally, the Act amends section 50-12-101 to add language allowing the Constitutional Amendments Publication Board to assign a fifteen-word short title to each constitutional amendment, which would then be put on the ballot.<sup>163</sup>

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163. Compare 1981 Ga. Laws 116, § 1, at 116-17 (formerly found at O.C.G.A. § 50-12-101 (1998)), with O.C.G.A. § 50-12-101 (Supp. 2001).