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## ELECTIONS Ethics in Government: Campaign Contribution and Disclosure Provisions

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## ELECTIONS

### *Ethics in Government: Campaign Contribution and Disclosure Provisions*

CODE SECTIONS:	O.C.G.A. §§ 21-5-33 to -34, -50 (amended), 21-5-30(g), -3(14.1), -30.2, -35, -40 to -45 (new)
BILL NUMBERS:	HB 1312, HB 1336, HB 1385, HB 1465
ACT NUMBERS:	1310, 1092, 1237, 1165
SUMMARY:	HB 1312 revises the provisions for transfer of excess campaign funds after a state-wide election. HB 1336 prohibits any government agency from contributing to political organizations or campaigns and revises requirements for financial disclosure by political candidates for state-wide public offices. HB 1385 requires that candidates disclose the business, occupation, or place of employment for each donor contributing over \$1,000; that members of the General Assembly, state-wide elected officials, and their respective campaign committees not accept campaign contributions during a legislative session; and that the maximum permissible contribution by any donor to a candidate is \$3,500 per election. HB 1465 exempts elected soil and water district supervisors from filing campaign contribution disclosure reports.
EFFECTIVE DATE:	March 28, 1990 (21-5-30.2); April 4, 1990 (21-5-3(14.1)), 21-5-30(g), 21-5-34 (in part), 21-5-35, 21-5-50; July 1, 1990 (21-5-34 (in part), 21-5-40 to -45)

### *History HB 1312*

Prior to the 1990 legislative session, a candidate for public office could, under certain conditions, convert excess campaign funds to personal use.<sup>1</sup> Before converting the funds to personal use a candidate was required to: 1) notify each "contributor to the most recent campaign"

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1. 1986 Ga. Laws 957 (formerly found at O.C.G.A. § 21-5-33(b)(1)(F) (1987)).

of the candidate's intent to convert the funds to personal use;<sup>2</sup> 2) provide an opportunity for every contributor to the most recent campaign to receive a pro rata distribution from the excess funds;<sup>3</sup> and 3) distribute the contributions pro rata to all contributors who objected to the candidate's conversion of the funds.<sup>4</sup> These conditions did not apply to state-wide candidates with less than \$5,000 in excess campaign funds or to other candidates with less than \$1,000.<sup>5</sup> The Code did not provide for transfer of excess campaign funds to contributors beyond the contributors' respective pro rata contributions.<sup>6</sup>

### HB 1312

The Act amends the provision on transfer of excess campaign contributions to a candidate. The purpose of HB 1312 is to promote administrative efficiency and fairness.<sup>7</sup> Instead of being able to convert excess contributions to personal use, a candidate must now disburse excess funds by one of several prescribed methods. Permissible disbursements include donations to educational, charitable, or nonprofit institutions;<sup>8</sup> transfers to a national, state, or local political campaign committee or party;<sup>9</sup> transfers to the contributors, limited only by the amount of each contributor's original contribution;<sup>10</sup> or repayment of campaign debts.<sup>11</sup> A candidate may also use the funds in future election campaigns.<sup>12</sup>

The original version of HB 1312 provided only for distributions of excess campaign funds to contributors based on their respective pro rata contributions.<sup>13</sup> The House Rules Committee substitute changed the pro rata requirement to provide that a transfer to contributors be limited only by the amount of each contributor's original donation.<sup>14</sup>

2. 1986 Ga. Laws 957 (formerly found at O.C.G.A. § 21-5-33(b)(1)(F)(i)(I) (1987)).

3. 1986 Ga. Laws 957 (formerly found at O.C.G.A. § 21-5-33(b)(1)(F)(i)(II) (1987)).

4. 1986 Ga. Laws 957 (formerly found at O.C.G.A. § 21-5-33(b)(1)(F)(i)(III) (1987)).

5. 1986 Ga. Laws 957 (formerly found at O.C.G.A. § 21-5-33(b)(1)(F)(ii) (1987)).

6. 1986 Ga. Laws 957 (formerly found at O.C.G.A. § 21-5-33(b)(1)(C) (1987)).

7. Interview with Representative Bill Lee, Majority Caucus Chairman, House District No. 72, in Atlanta (Mar. 8, 1990) [hereinafter Lee Interview]. Representative Lee stated that the Act simplifies disbursement of excess campaign funds by eliminating the procedure of notifying all contributors and waiting for expiration of the 30-day period for contributors to object to the candidate's personal conversion of the funds. Representative Lee explained that prohibiting personal conversion of the funds is fair because excess funds "were never intended for personal use." *Id.*

8. O.C.G.A. § 21-5-33(b)(1)(A) (Supp. 1990).

9. O.C.G.A. § 21-5-33(b)(1)(B) (Supp. 1990).

10. O.C.G.A. § 21-5-33(b)(1)(C) (Supp. 1990).

11. O.C.G.A. § 21-5-33(b)(1)(E) (Supp. 1990).

12. O.C.G.A. § 21-5-33(b)(1)(D) (Supp. 1990).

13. HB 1312, as introduced, 1990 Ga. Gen. Assem.

14. HB 1312 (HCS), 1990 Ga. Gen. Assem.

The House Rules Committee substitute also added a specific prohibition on converting the interest earned on contributions to a candidate's personal use.<sup>15</sup>

### *History HB 1336*

Before the passage of HB 1336, support of a political organization by a state government agency may have been considered unethical, but it was not illegal.<sup>16</sup> The Code did not prohibit government agencies from using funds budgeted for such items as public relations and tourism to support political activities.<sup>17</sup> While prohibiting government agencies from directly supporting political organizations,<sup>18</sup> the Act provides that political organizations may still use facilities such as civic centers or other public meeting places.<sup>19</sup>

### *HB 1336*

The Act adds a new Code section which prohibits any government agency from contributing to any political organization, campaign committee, or political action committee.<sup>20</sup> The Act applies to state, city, county, and regional government agencies and authorities.<sup>21</sup> Political organizations, campaign committees, and political action committees are prohibited from accepting contributions from government agencies.<sup>22</sup>

15. *Id.*

16. Telephone interview with Representative Tommy Tolbert, House District No. 58, (Apr. 11, 1990) [hereinafter Tolbert Interview]. Representative Tolbert, one of the bill's sponsors, explained that the Attorney General informed him that Georgia law had no provision for prosecuting a state agency for spending money at its discretion on political activities. *Id.* The Attorney General unofficially opined to Representative Tolbert, however, that such appropriations are unethical. *Id.* Representative Tolbert's concern in sponsoring the bill was to "keep government funds out of politics." *Id.*

17. *Id.* ("Parks are designed for tourism, but 'public relations and tourism' have been given as reasons for spending money on assisting political organizations.").

18. The legislative purpose of HB 1336 is "to prevent government agencies from using, arbitrarily and at their own discretion, based on their own views, their budgets, from spending tax money supporting political parties, campaigns, or activities." *Id.* Although the 1988 Democratic National Convention in Atlanta received local media coverage on the issue of such support at the Stone Mountain Park facility, Representative Tolbert, a Republican, stated that he "has no problem with supporting conventions of either party, if appropriations are through the proper budget process of the General Assembly." *Id.*

19. *Id.* Representative Tolbert stated that "providing equal access by political organizations to a public meeting place is not considered a contribution." The Act neither increases nor decreases the right of access by a political organization to a public meeting place; it simply prohibits government agencies from favoring any political organization. *Id.*

20. O.C.G.A. § 21-5-30.2 (Supp. 1990).

21. O.C.G.A. § 21-5-30.2(a)(1) (Supp. 1990).

22. O.C.G.A. § 21-5-30.2(c) (Supp. 1990).

The Act sets out areas of regulation for public employee political activities which remain unaffected.<sup>23</sup> The regulation of use of the Capitol grounds also remains unchanged.<sup>24</sup> The House Committee on Governmental Affairs substitute grants political organizations equal access to public meeting places.<sup>25</sup>

### *History HB 1385*

The 1990 General Assembly faced the challenge of amending laws regulating gubernatorial, legislative, and other state-wide campaigns during an election year. The general concept of higher ethical standards during an election campaign received widespread support, but the choice of regulation methods was the subject of heated debate.<sup>26</sup> The battle became particularly competitive because the election regulations would apply to the 1990 governor's race.<sup>27</sup> Candidates for the state offices of governor, house of representatives, senator, and judge were concerned with the legislative developments.<sup>28</sup>

Prior law required campaign committees to register with the Secretary of State or the appropriate local filing office before receiving campaign contributions.<sup>29</sup> Individual candidates had been allowed to receive contributions apart from campaign committees.<sup>30</sup> Also, the Ethics in Government Act did not provide any special requirements for contributors of over \$1,000.<sup>31</sup>

Legislators could receive contributions during a session of the General Assembly so long as they reported the contributions on the first day of the month following that in which the contributions were received.<sup>32</sup>

23. O.C.G.A. § 21-5-30.2(d)(1)–(2) (Supp. 1990).

24. O.C.G.A. § 21-5-30.2(d)(3) (Supp. 1990). The bill does not attempt to change the traditional freedom of any political or civic organization to meet at the Capitol. Tolbert Interview, *supra* note 16.

25. O.C.G.A. § 21-5-30.2(d)(4) (Supp. 1990).

26. May and Secrest, *Candidates Line Up Behind Contribution Limits*, Atlanta Const., Feb. 14, 1990, at D3, col. 1 [hereinafter *Candidates Line Up*].

27. Mantius, *Harris Signs Bill Overhauling Campaign Financing*, Atlanta J., Apr. 5, 1990, at E1, col. 1. Among the 1990 political candidates for governor were the sponsor of HB 1385, Lauren McDonald, Lieutenant Governor Zell Miller, State Senator Roy Barnes, former Atlanta Mayor Andrew Young, and Republican Representative Johnny Isakson. *Id.* The candidates have each taken a stand on the financial disclosure issue, and the media has covered the capricious debate on the subject. *Id.*; see also *Contradictions Confound in Governor's Races*, Atlanta J., Apr. 5, 1990 at E2, col. 2.

28. *Candidates Line Up*, *supra* note 26.

29. 1988 Ga. Laws 630 (formerly found at O.C.G.A. § 21-5-30(b) (Supp. 1989)).

30. *Id.* (formerly found at O.C.G.A. § 21-5-30(a) (Supp. 1989)).

31. *Id.* (formerly found at O.C.G.A. § 21-5-30 (Supp. 1989)).

32. 1986 Ga. Laws 957 (formerly found at O.C.G.A. § 21-5-35(a) (1987)). The Act prohibits all public officers from receiving contributions during a legislative session. O.C.G.A. § 21-5-35(a) (Supp. 1990). An exception is a contribution received during a session generated from a dinner or event which took place prior to the session. See O.C.G.A. § 21-5-35(b) (Supp. 1990).

Prior law placed no limit on the amount of contributions from a single donor, but provided that contributions over \$101 be disclosed in a candidate's financial report.<sup>33</sup> Prior law did not require public officers to file a financial disclosure statement with the State of Georgia until July 1 of the year the candidate qualifies for election.<sup>34</sup> Also, these reports were not required to include the prior five years' transactions by the candidate or a member of the candidate's family.<sup>35</sup> No disclosure requirement existed for candidates with income from family members who were registered agents for the purpose of supporting or opposing legislation before the General Assembly.<sup>36</sup> The 1990 General Assembly considered the ethics of these issues.<sup>37</sup>

### *HB 1385*

Before receiving contributions, individual candidates must file with the Secretary of State or the appropriate local officers a declaration of intention to receive campaign funds.<sup>38</sup> Candidates must disclose the "business, occupation or place of employment" of any donor contributing more than \$1,000.<sup>39</sup> Neither public officers nor their respective campaign committees may receive any donations during a legislative session.<sup>40</sup> Donations may be received so long as they are returned to the donor,<sup>41</sup> or if they constitute proceeds from a fundraising event which occurred before the session.<sup>42</sup>

Contributions are limited to \$3,500 per contributor for each election.<sup>43</sup> The original bill set a contribution limit of \$5,000 for every twenty-four months per donor.<sup>44</sup> The Senate Committee on Governmental Operations

33. 1989 Ga. Laws 10 (formerly found at O.C.G.A. § 21-5-34 (Supp. 1989)); *see also* O.C.G.A. § 21-5-50(b)(1) (Supp. 1989). Representative Lauren McDonald, the bill's sponsor, stated that participation in the election process should be more than just for the "special interests and the affluent . . ." Interview with Representative Lauren McDonald, House District No. 12, (May 3, 1990). Representative McDonald stated that donors who give more than \$100,000 are "looking for more than just good government." *Id.*

34. 1986 Ga. Laws 957 (formerly found at O.C.G.A. § 21-5-50(a)(1) (Supp. 1989).

35. O.C.G.A. § 21-5-50(c)(1)(A) (Supp. 1990).

36. O.C.G.A. § 21-5-50(c)(1)(B) (Supp. 1990).

37. Lee Interview, *supra* note 7. Representative Lee stated that the leadership decided this year to address ethics issues which had existed for some time and needed attention. *Id.*

38. O.C.G.A. § 21-5-30(g) (Supp. 1990).

39. O.C.G.A. § 21-5-34(b)(1) (Supp. 1990). As introduced, the bill set the reporting threshold at \$101. HB 1385, as introduced, 1990 Ga. Gen. Assem.

40. O.C.G.A. § 21-5-35(a) (Supp. 1990).

41. O.C.G.A. § 21-5-35(b)(1) (Supp. 1990).

42. O.C.G.A. § 21-5-35(b)(2) (Supp. 1990).

43. O.C.G.A. § 21-5-41(a) (Supp. 1990). The term "election" includes primaries, run-offs, general elections, general election run-offs, special elections, and special election run-offs. O.C.G.A. § 21-5-40(4) (Supp. 1990).

44. HB 1385, as introduced, 1990 Ga. Gen. Assem.

substitute changed the limit to \$3,500 for each election per donor.<sup>45</sup> The conference committee also considered the Senate floor amendment, which set the limit at \$5,000 for each election per donor,<sup>46</sup> but finally opted for the \$3,500 limit.<sup>47</sup>

Candidates for state-wide elected public office must still file a financial disclosure statement for the preceding calendar year, within seven days of qualifying for an election.<sup>48</sup> The Senate Committee on Governmental Operations proposed separate disclosure rules for gubernatorial candidates.<sup>49</sup> The Senate floor amendment required all candidates for state-wide elected offices to file financial disclosure statements.<sup>50</sup>

The latter proposal was adopted in the final version of HB 1385.<sup>51</sup> The Senate introduced a floor amendment which would have created an Audit Division of the State Ethics Commission to review the financial disclosure statements, but no funding was provided.<sup>52</sup> The final version of the bill did not include the Audit Division provision.

Within seven days of qualifying for state-wide public office, candidates must submit a disclosure statement for the previous five years.<sup>53</sup> The disclosure statement must report: 1) transactions with the State of Georgia aggregating \$9,000 or more<sup>54</sup> and 2) transactions aggregating \$9,000 or more between a candidate or any business substantially owned or controlled by a candidate or candidate's family member and an agent registered with the Secretary of State for the purpose of supporting or opposing Georgia legislation.<sup>55</sup>

The House Rules Committee substitute originally required disclosure within seven days without regard to the amount of the transactions involved.<sup>56</sup> The House floor amendment set the \$9,000 aggregate threshold,<sup>57</sup> while the Senate Committee on Governmental Operations deleted the \$9,000 threshold.<sup>58</sup> These transactions are the disclosure provisions which the Senate Committee on Governmental Operations proposed for gubernatorial candidates.<sup>59</sup>

45. HB 1385 (SCS), 1990 Ga. Gen. Assem.

46. HB 1385 (SCSFA), 1990 Ga. Gen. Assem.

47. O.C.G.A. § 21-5-41 to -43 (Supp. 1990).

48. O.C.G.A. § 21-5-50(c)(1) (Supp. 1990).

49. HB 1385 (SCC), 1990 Ga. Gen. Assem; *see infra* note 59 and accompanying text.

50. HB 1385 (SCSFA), 1990 Ga. Gen. Assem. O.C.G.A. § 21-5-50(a)(1) (Supp. 1990).

51. O.C.G.A. § 21-5-50(c)(1) (Supp. 1990).

52. HB 1385 (SCSFA), 1990 Ga. Gen. Assem.

53. O.C.G.A. § 21-5-50(c)(1) (Supp. 1990).

54. O.C.G.A. § 21-5-50(c)(1)(A) (Supp. 1990).

55. O.C.G.A. § 21-5-50(c)(1)(B) (Supp. 1990); *see also* O.C.G.A. § 28-7-2 (1986).

56. HB 1385 (HCS), 1990 Ga. Gen. Assem.

57. HB 1385 (HCSFA), 1990 Ga. Gen. Assem.

58. HB 1385 (SCS), 1990 Ga. Gen. Assem.

59. *Id.* *See also supra* note 49 and accompanying text.

The conference committee chose to require disclosure of the above transactions by all candidates for state-wide elected office.<sup>60</sup> The conference committee also included the \$9,000 threshold for these transactions.<sup>61</sup>

Only the total amount of any transaction must be reported when the information stems from a legally privileged relationship, including attorney-client, psychiatrist-patient, and physician-patient; identifying data may be omitted.<sup>62</sup> The House Rules Committee substitute added this exception;<sup>63</sup> the Senate Committee on Governmental Operations substitute deleted the privilege exception.<sup>64</sup> The conference committee included the privilege exception in the final version of the bill.<sup>65</sup>

### *HB 1465*

HB 1465 exempts soil and water conservation district supervisors from the disclosure requirements.<sup>66</sup> Neither chamber proposed any substitutes or amendments to the original version of HB 1465.

### *Conclusion*

The 1990 legislative session enacted laws to address important campaign ethics issues. Despite the differing views of several key legislators running for the office of governor,<sup>67</sup> the new laws passed with little resistance. Candidates are no longer permitted to convert excess campaign funds to personal use.<sup>68</sup> State government agencies may neither contribute funds nor provide special facilities to political campaigns.<sup>69</sup> The General Assembly enacted campaign financial and transactional disclosure requirements which should improve the standards of fairness and openness for future election campaigns.

*P. Ray*

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60. O.C.G.A. § 21-5-50(c)(1) (Supp. 1990).

61. *Id.*

62. O.C.G.A. 21-5-50(c)(2) (Supp. 1990).

63. HB 1385 (HCS), 1990 Ga. Gen. Assem.

64. HB 1385 (SCS), 1990 Ga. Gen. Assem.

65. O.C.G.A. § 21-5-50(c)(2) (Supp. 1990).

66. O.C.G.A. § 21-5-34(j) (Supp. 1990).

67. *Candidates Line Up*, *supra* note 26.

68. O.C.G.A. § 21-5-33 (Supp. 1990).

69. O.C.G.A. § 21-5-30.2 (Supp. 1990).