

2023

SB 222 - Amendments Regarding Third-Party Funding for Conducting Elections

Mary Katherine Kennedy

Georgia State University College of Law, mkennedy32@student.gsu.edu

Noam Kleinman

Georgia State University College of Law, nkleinman1@student.gsu.edu

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>



Part of the [Election Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Mary Katherine Kennedy & Noam Kleinman, *SB 222 - Amendments Regarding Third-Party Funding for Conducting Elections*, 40 GA. ST. U. L. REV. 115 (2023).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol40/iss1/10>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact gfowke@gsu.edu.

ELECTIONS

Elections and Primaries Generally: Amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, Relating to Elections and Primaries Generally, so as to Provide that all Costs and Expenses Relating to Election Administration Are Paid for with Lawfully Appropriate Public Funds; Provide for Legislative Findings; Provide Definitions; Prohibit Certain Local Governments and Persons from Soliciting or Accepting Donations or Other Things of Value to Support the Performance of Election Administration; Provide for Exceptions; Provide for Penalties; Provide that the State Election Board Shall Be a Distinct Budget Unit and an Independent State Agency Attached to the Office of the Secretary of State for Administrative Purposes Only; Provide for an Executive Director of said Board; Provide for Venue in Any Action of said Board and its Members; Provide Duties for said Executive Director; Revise Provisions Relating to Election Superintendents and Registrars Taking or Accepting Funding, Grants, or Gifts; Prohibit County and Municipal Governments from Accepting Grants or Gifts for the Purpose of Administering Elections; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 21-2-18 (new), -30, -71, -212 (amended)
BILL NUMBER:	SB 222
ACT NUMBER:	273
GEORGIA LAWS:	2023 Ga. Laws 563
EFFECTIVE DATE:	May 3, 2023
SUMMARY:	The Act makes it a felony for any government employee, election official, or county or municipal government to accept third-party funding for

conducting elections. Boards of registrars, superintendents, counties, or municipalities can only accept election grants or gifts from the State of Georgia or the federal government, with the exception of donations of polling locations. Additionally, the Election Board Committee and the Office of the Secretary of State retain an administrative connection but are fiscally separated. The Act also creates an executive director position for the Election Board Committee and grants this director the rights and privileges necessary to oversee the Committee.

History

Elections are expensive.¹ And before the 2023 legislative session, election administration funding in Georgia could vary greatly from county to county; some legislators view this as unfair while others call it necessary.² Certain counties have sought additional funding to support running public elections.³ One such county, DeKalb, accepted a grant from a nonprofit, The Center for Tech and Civic Life, to help fund its elections.⁴

1. See Telephone Interview with Sen. Max Burns (R-23rd) (June 2, 2023) [hereinafter Burns Interview] (on file with the Georgia State University Law Review). See generally Archith Seshadri, *How Much Do Runoff Elections Cost Taxpayers?*, WSAV.COM (Dec. 2, 2022), <https://www.wsav.com/news/walker-warnock-hq/how-much-do-runoff-elections-cost-taxpayers/> [<https://perma.cc/9XJ6-RT88>].

2. Zoe Seiler, *Decatur Legislators Discuss Mental Health, Education During Town Hall*, DECATURISH (Apr. 23, 2023), <https://decatrish.com/2023/04/decat-ur-legislators-discuss-mental-health-education-during-town-hall/> [<https://perma.cc/7EPG-8N77>]. Senator Elena Parent (D-42nd) from DeKalb said, “it is a very different thing trying to run elections in our big urban counties versus in small rural counties.” *Id.*

3. Amy Sherman, *Grant to Georgia’s DeKalb County Doesn’t Amount to an Elections ‘Takeover’*, POLITIFACT (Mar. 15, 2023), <https://www.politifact.com/factchecks/2023/mar/15/facebook-posts/grant-to-georgias-dekalb-county-doesnt-amount-to-a/> [<https://perma.cc/NL6W-EU4B>].

4. *Id.*

In 2021, the Georgia Legislature passed Senate Bill (SB) 202, also known as the Election Integrity Act.⁵ The Election Integrity Act included a provision prohibiting election superintendents or the boards of registrars from directly accepting funding from third parties or private sources.⁶ Dekalb County utilized a loophole, arguably violating the spirit of the law while remaining within its letter, by having the county itself—rather than the election board—accept the aforementioned grant money for election administration.⁷ Section 1 of the Act indirectly referenced Dekalb’s actions as “confusion among certain Georgia counties,” requiring a clarification in the previously enacted law.⁸

The author of SB 202 and SB 222, Senator Max Burns (R-23rd), said, “the intent [of SB 202] was that no third-party funding would be utilized in Georgia elections.”⁹ The purpose of SB 222 is to clarify SB 202 and ensure that the spirit of the law and the intent of the Election Integrity Act align with its written letter.¹⁰ The American Civil Liberties Union of Georgia (ACLU) contended that SB 222 would make it more difficult for large counties to hold elections because they would receive the same amount of funding as smaller counties.¹¹ Additionally, the ACLU thought this budgeting restriction could theoretically serve to silence minority voters, most of whom live in larger counties with urban areas.¹² However, Senator Burns and the supporters of the bill affirmed that it would simply equitably distribute state resources.¹³ Individual counties also maintain the ability to seek additional funding from the State of Georgia or through federal programs.¹⁴

5. Leila Fawaz, Kate Mize & Monica Vu, *SB 202: Revisions to Georgia’s Election and Voting Procedures*, 38 GA. ST. U. L. REV. 105, 116 (2022).

6. *Id.* at 154.

7. Telephone Interview with Rep. Houston Gaines (R-120th) (May 26, 2023) [hereinafter Gaines Interview] (on file with the Georgia State University Law Review).

8. 2023 Ga. Laws 563, § 1, at 564.

9. Burns Interview, *supra* note 1.

10. *See id.*

11. Electronic Mail Interview with Christopher Bruce, Policy Director, American Civil Liberties Union of Georgia (May 25, 2023) [hereinafter Bruce Interview] (on file with the Georgia State University Law Review).

12. *See id.*

13. *See* Burns Interview, *supra* note 1.

14. *See* O.C.G.A. § 21-2-71 (2023).

*Bill Tracking of SB 222**Consideration and Passage by the Senate*

Senator Max Burns (R-23rd) sponsored SB 222 in the Senate with Senator Sam Watson (R-11th), Senator Chuck Payne (R-54th), Senator Clint Dixon (R-45th), Senator Frank Ginn (R-47th), Senator Jason Anavitarte (R-31st), Senator Rick Williams (R-25th), Senator Ben Watson (R-1st), Senator Lee Anderson (R-24th), Senator Randy Robertson (R-29th), Senator Shawn Still (R-48th), Senator John Albers (R-56th), Senator Marty Harbin (R-16th), and Senator Steve Gooch (R-51st) cosponsoring.¹⁵ The bill, as introduced, provided that all costs and expenses related to elections must be paid from lawfully appropriated public funds.¹⁶

The Senate first read the bill and committed it to the Ethics Committee on February 22, 2023.¹⁷ Then, on February 28, 2023, the Ethics Committee favorably reported the bill by substitute.¹⁸ The substitute provided a different definition of “Government Employee” by removing the reference to the “State Election Board members” but keeping the language about serving as a county or municipal government employee or being a part of a “group acting in concert” with those employees.¹⁹ Further, the substitute added that if “[a]ny county or municipal government, government employee, or election official” accepted “a contribution, donation, service, or anything else of value . . . after January 1, 2023,” they would need to return it within fourteen days of the effective date of the bill.²⁰ The substitute also changed “services provided without remuneration” to “services provided by individuals without remuneration.”²¹ Lastly, the substitute

15. Georgia General Assembly, SB 222, Bill Tracking [hereinafter SB 222, Bill Tracking], <https://www.legis.ga.gov/legislation/64653> [<https://perma.cc/4J7Q-A5JS>].

16. SB 222, as introduced, 2023 Ga. Gen. Assemb.

17. State of Georgia Final Composite Status Sheet, SB 222, May 9, 2023.

18. *Id.*

19. Compare SB 222, as introduced, § 1, p. 2, ll. 17–19, 2023 Ga. Gen. Assemb., with SB 222 (SCS), § 1, p. 2, ll. 17–18, 2023 Ga. Gen. Assemb.

20. Compare SB 222, as introduced, § 1, p. 2, ll. 33–38, 2023 Ga. Gen. Assemb., with SB 222 (SCS), § 1, p. 2, ll. 33–38, 2023 Ga. Gen. Assemb.

21. Compare SB 222, as introduced, § 1, p. 2, ll. 39–41, 2023 Ga. Gen. Assemb., with SB 222 (SCS), § 1, p. 2, ll. 39–41, 2023 Ga. Gen. Assemb.

increased the applicable nominal value threshold of goods to which the bill applies from \$100 to \$200.²² The Senate read the bill for a second time on March 1, 2023.²³ The Senate read the bill for a third time and subsequently passed the bill on March 2, 2023, by a vote of 33 to 23.²⁴

Consideration and Passage by the House

Representative Houston Gaines (R-120th) sponsored SB 222 in the House.²⁵ The House read the bill for the first time on March 6, 2023, and committed the bill to the Governmental Affairs Committee.²⁶ The House read the bill for the second time on March 7, 2023.²⁷ The Governmental Affairs Committee substitute included multiple changes, including: (1) making the State Election Board a distinct budget unit and an independent state agency, (2) removing the Secretary of State from the State Election Board, and (3) allowing the State Election Board to hire investigators for the Board-ordered investigations.²⁸ On March 20, 2023, the House Rules Committee recommitted the bill to the Governmental Affairs Committee.²⁹ The Governmental Affairs Committee favorably reported the bill by a second substitute on March 21, 2023.³⁰ The second substitute increased the nominal value threshold of goods to which the bill applies from \$200 to \$500.³¹ The second substitute also deleted language that removed the Secretary of State from the State Election Board and language that allowed the State Election Board to hire investigators.³² The House read the bill for the third time on March 27, 2023.³³ The House withdrew the bill from the Rules Calendar and

22. Compare SB 222, as introduced, § 1, p. 2, ll. 39–41, 2023 Ga. Gen. Assemb., with SB 222 (SCS), § 1, p. 2, ll. 39–41, 2023 Ga. Gen. Assemb.

23. State of Georgia Final Composite Status Sheet, SB 222, May 9, 2023.

24. *Id.*; Georgia Senate Voting Record, SB 222, #129 (Mar. 2, 2023).

25. SB 222, Bill Tracking, *supra* note 15.

26. State of Georgia Final Composite Status Sheet, SB 222, May 9, 2023.

27. *Id.*

28. SB 222 (LC 47 2465S), § 2, pp. 5–8, ll. 123–81, 2023 Ga. Gen. Assemb.

29. State of Georgia Final Composite Status Sheet, SB 222, May 9, 2023.

30. *Id.*

31. Compare SB 222 (LC 47 2465S), § 1, p. 3, ll. 44–46, 2023 Ga. Gen. Assemb., with SB 222 (LC 47 2506S), § 1, p. 3, ll. 43–45, 2023 Ga. Gen. Assemb.

32. SB 222 (LC 47 2465S), § 2, p. 5, l. 123, 2023 Ga. Gen. Assemb.; *id.* § 2, p. 8, ll. 180–81.

33. State of Georgia Final Composite Status Sheet, SB 222, May 9, 2023.

recommitted it to the Rules Committee on March 27, 2023.³⁴ The Rules Committee substitute removed the language requiring the return of donations that were accepted after January 1, 2023, but kept the other changes by the Governmental Affairs Committee.³⁵ The Rules Committee substitute passed in the House on March 27, 2023, by a vote of 100 to 69.³⁶

On March 29, 2023, the Senate agreed to the House substitute by a vote of 32 to 21.³⁷ The Senate then sent the bill to Governor Brian Kemp (R), who signed it into law on May 3, 2023.³⁸

The Act

Section 1

According to Section 1, the Act is not an admission that the law previously allowed “outside funding of election administration.”³⁹ Instead, Section 1 refers to “confusion among certain Georgia counties” as the purpose for clarifying the law.⁴⁰

Section 2

Section 2 adds Code section 21-2-18, which provides definitions, exceptions, and a minimum punishment for accepting unlawful election funding.⁴¹ Subsection (a)(1) defines a “[g]overnment employee” as anyone or any “committee, entity, or group acting in concert who are employed by a county or municipal government.”⁴²

34. *Id.*

35. Compare SB 222 (LC 47 2506S), § 1, p. 2, ll. 37–42, 2023 Ga. Gen. Assemb., with SB 222 (LC 47 2532S), § 2, p. 3, ll. 44–46, 2023 Ga. Gen. Assemb.

36. State of Georgia Final Composite Status Sheet, SB 222, May 9, 2023; Georgia House of Representatives Voting Record, SB 222, #334 (Mar. 27, 2023).

37. State of Georgia Final Composite Status Sheet, SB 222, May 9, 2023; Georgia Senate Voting Record, SB 222, #354 (Mar. 29, 2023).

38. SB 222, Bill Tracking, *supra* note 15.

39. 2023 Ga. Laws 563, § 1, at 564.

40. *Id.*

41. 2023 Ga. Laws 563, § 2, at 564–65 (codified at O.C.G.A. § 21-2-18 (2023)).

42. § 21-2-18(a)(1).

Subsection (b) provides that all election administration expenses shall be financed by “lawfully appropriated public funds.”⁴³ Further, subsection (c) prohibits government employees from requesting, taking, or accepting anything of value for election administration.⁴⁴

Subsection (d) allows for three exceptions. The Code section does not apply to polling location donations, free services provided by individuals, or goods with a value of less than \$500.⁴⁵

Finally, subsection (e) provides that violating Code section 21-2-18 constitutes a felony punishable by at least a year of imprisonment and a minimum fine of \$10,000.⁴⁶

Section 3

Section 3 amends Code section 21-2-30 to make the State Election Board a distinct budget unit, keeping the Board attached to the office of the Secretary of State “for administrative purposes only.”⁴⁷

Subsection (h) gives the Board the “power to appoint an executive director” who serves “as the secretary of the board ex officio” but not as a voting board member.⁴⁸

Subsections (i) and (j) provide administrative details for travel reimbursement and legal action regarding the Board, respectively.⁴⁹

Subsection (k) details the executive director’s duties such as: (1) keeping board records of proceedings, (2) employing personnel to assist the executive director and determining the personnel’s pay upon board approval, (3) planning board meetings and maintaining a schedule of those meetings with board consent, (4) entering into legal agreements needed to “carry out the provisions of this chapter” upon board approval, and (5) “prepar[ing] and deliver[ing] a written annual report to the Governor and the chairpersons for the House and Senate

43. *Id.* § 21-2-18(b).

44. *Id.* § 21-2-18(c).

45. *Id.* § 21-2-18(d).

46. *Id.* § 21-2-18(e).

47. 2023 Ga. Laws 563, § 3, at 567 (codified at O.C.G.A. § 21-2-30(g) (2023)). A budget unit is defined in “Part 1 of Article 4 of Chapter 12 of Title 45.” § 21-2-30(g).

48. § 21-2-30(h).

49. *Id.* § 21-2-30(i)-(j).

Appropriations Committees.”⁵⁰ The annual report provides summaries of the Board’s financial state and activities of the previous year.⁵¹

Section 4

Section 4 amends Code section 21-2-71 to include “county” and “municipality” among the entities prohibited from accepting “grants or gifts” for election administration from any source other than the State of Georgia or the federal government.⁵² Section 4 of the Act also removes “funding” from the list of what cannot be accepted.⁵³

Section 5

Like Section 4, Section 5 amends Code section 21-2-212 to remove “funding” from the group of “grants” and “gifts” that the board of registrars are prohibited from taking for election administration.⁵⁴ Subsection 21-2-212(f) provides that the board of registrars can only accept “grants or gifts” from the State of Georgia or the federal government.⁵⁵

Section 6

Section 6 provides that the Act is effective upon the Governor’s signature.⁵⁶

Analysis

Currently, twenty-four states have restrictions on the use of private or philanthropic funding for election administration.⁵⁷ The COVID-19

50. *Id.* § 21-2-30(k).

51. *Id.* § 21-2-30(k)(5).

52. 2023 Ga. Laws 563, § 4, at 568 (codified at O.C.G.A. § 21-2-71(b) (2023)).

53. *Id.* (codified at § 21-2-71(b)).

54. *Id.* (codified at O.C.G.A. § 21-2-212(f) (2023)).

55. § 21-2-212(f).

56. 2023 Ga. Laws 563, § 6, at 568.

57. *Prohibiting Private Funding of Elections*, NAT’L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/elections-and-campaigns/prohibiting-private-funding-of-elections> [<https://perma.cc/DWX6-L7UW>] (Jan. 24, 2023).

pandemic led to a wide range of unexpected costs, from mailing and processing the higher number of mail ballots to demands for more cleaning supplies for in-person voting facilities.⁵⁸ With additional election administration funding, some states have banned election officials from accepting or using private funds, while other states have created laws on “how and when such funding can be accepted.”⁵⁹ Georgia’s previously enacted law stated that no superintendent or board of registrars “shall take or accept any grants or gifts . . . from any source other than the State of Georgia, or the federal government.”⁶⁰ This Act, however, amends the aforementioned subsection to state that, in addition to superintendents and board of registrars, no county or municipality can accept grants or gifts for election administration.⁶¹

Many states have similar laws, applicable to either anyone responsible for running elections or to explicitly named entities who do the same.⁶² There are four categories of states with similar laws: (1) those with a narrow definition of who may not accept funds, (2) those that restrict election officials, (3) those that restrict the entire county or municipality, and (4) those that explicitly allow only government funding.⁶³ Similar to the previous Georgia law, narrow-definition states expressly name the particular officials that are restricted from accepting funds, often naming the superintendent or board of registrars.⁶⁴ Some states at this level include Arkansas, Nebraska, Tennessee, and South Carolina.⁶⁵ The next category of states is broader in its definition and restricts the officials and individuals “responsible for” conducting, running, or putting on elections.⁶⁶ These states include Alabama, Florida, Mississippi, Ohio, and West Virginia.⁶⁷ The next category, the one Georgia now falls into, bars the entire county

58. *Id.*

59. *Id.*

60. O.C.G.A. § 21-2-71(b) (2022); O.C.G.A. § 21-2-212(f) (2022).

61. 2023 Ga. Laws 563, § 4, at 568 (codified at § 21-2-71(b)).

62. *Prohibiting Private Funding of Elections*, *supra* note 57.

63. *See id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

and municipality from accepting the funds.⁶⁸ Georgia is unique because its ban on accepting funding includes counties and municipalities, not only those within the election running entities.⁶⁹ There are a few states that similarly ban any “political subdivision” from accepting grants, funds, gifts, and the like for elections; these include South Dakota, North Dakota, and Indiana.⁷⁰ The last category is the broadest and includes Idaho, Oklahoma, and Pennsylvania, which require that the elections held in the state must be funded by appropriations from state and government sources exclusively.⁷¹

This Act clarifies the previously passed Election Integrity Act of 2021.⁷² Otherwise, the Act should not have a major effect on other Georgia laws because of its narrow purpose.⁷³ However, the Act does still have potential unintended consequences.⁷⁴

Throughout the drafting and voting process, opponents of the Act remained vocal about how the Act could inadvertently suppress voters by limiting the resources counties have to run their elections.⁷⁵ Larger counties that require additional voting facilities and have more votes to physically count do not have access to the private funds they previously relied on, “which can impact poll worker pay, voting locations, and voter expansion programs [and] outreach.”⁷⁶

The supporters of the Act remain adamant that these issues are speculative.⁷⁷ They affirm that these counties can still access funds through federal and state resources and that the funding distribution remains adequate for counties.⁷⁸ Additionally, the purpose behind the Election Integrity Act of 2021 and the reason for banning private

68. *Prohibiting Private Funding of Elections*, *supra* note 57; 2023 Ga. Laws 563, § 4, at 568 (codified at O.C.G.A. § 21-2-71(b) (2023)).

69. *See Prohibiting Private Funding of Elections*, *supra* note 57; 2023 Ga. Laws 563, § 4, at 568 (codified at § 21-2-71(b)).

70. *Prohibiting Private Funding of Elections*, *supra* note 57.

71. *Id.*

72. *See* Gaines Interview, *supra* note 7 (describing the bill as “clarifying” SB 202, which was passed in 2021).

73. *See id.*

74. *See* Bruce Interview, *supra* note 11.

75. *See id.*

76. *Id.*

77. *See* Burns Interview, *supra* note 1 (“[The bill] is not designed to limit contributions to help defer and offset the cost of elections.”).

78. *See* Gaines Interview, *supra* note 7.

funding is to avoid any undue influence in the election process completely.⁷⁹ Accepting private funds from philanthropic and other sources could influence state elections, particularly if donors target certain counties but ignore others.⁸⁰ If restricted to only government funds, counties would have no reason to bow to other monetary sources and could keep elections free from private influences.⁸¹

The latter portion of the Act deals with financially separating the State Election Board from the Secretary of State.⁸² The Election Voting Integrity Act began this separation in 2021, replacing the Secretary of State with a chairperson on the State Election Board.⁸³ The State Election Board portion of the Act supports the other portions by creating a nonvoting executive director position within the State Election Board.⁸⁴ The executive director, with board approval, can enter into agreements with others “to carry out” the Chapter’s provisions.⁸⁵ Although no executive director has been appointed, they could, in theory, use the ability to review county election finances to keep third parties from funding elections.⁸⁶

Conclusion

In conclusion, the Act specifies that county and municipal governments may incur felonious penalties if they accept election administration funding outside of the state or federal government.⁸⁷ Passing laws to limit the source of election funding is not a new practice and many states have done it before Georgia.⁸⁸ With the

79. *See id.*

80. *See id.*; Video Recording of Senate Proceedings at 1 hr., 50 min., 23 sec. (Mar. 2, 2023) (remarks by Sen. Max Burns (R-23rd)), <https://www.youtube.com/watch?v=lqVepB12bDA> [<https://perma.cc/R9PK-FV6K>].

81. *See* Gaines Interview, *supra* note 7.

82. 2023 Ga. Laws 563, § 3, at 567 (codified at O.C.G.A. § 21-2-30(g) (2023)).

83. *Compare id.*, with 2021 Ga. Laws 14, § 5, at 18. Stanley Dunlap, *State Election Board Reconvenes After Secretary of State Booted from Chair*, GA. RECORDER (Apr. 27, 2021, 8:13 PM), <https://georgiarecorder.com/2021/04/27/state-election-board-reconvenes-after-secretary-of-state-booted-from-chair/> [<https://perma.cc/E4AL-D2VG>].

84. 2023 Ga. Laws 563, § 3, at 567 (codified at § 21-2-30(h)).

85. *Id.* at 567–68 (codified at § 21-2-30(k)(4)).

86. *Id.* (codified at § 21-2-30(k)(4)).

87. 2023 Ga. Laws 563, § 4, at 568 (codified at O.C.G.A. § 21-2-71(b) (2023)); 2023 Ga. Laws 563, § 2, at 565 (codified at O.C.G.A. § 21-2-18(e) (2023)).

88. *Prohibiting Private Funding of Elections*, *supra* note 57.

distinct variables involved with each county's elections, it will be difficult to determine specific repercussions of this Act. When the Board eventually appoints an executive director, the director's use of power and the role the director takes in punishing counties that violate the Act will be telling.

Mary Katherine Kennedy & Noam Kleinman