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## ELECTIONS Ethics in Government: Relax Financial Disclosure Requirements

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## ELECTIONS

### *Ethics in Government: Relax Financial Disclosure Requirements*

CODE SECTIONS:	O.C.G.A. §§ 21-5-9 (amended), 21-5-30 to -32 (amended), 21-5-34 (amended), 21-5-50 (amended), 21-5-53 (amended)
BILL NUMBER:	SB 564
ACT NUMBER:	1217
SUMMARY:	The Act amends the Code to decrease campaign contribution and financial disclosure filing requirements for certain public officers. The amendments reduce penalties for violations and permit candidates who do not have a campaign committee to fulfill the reporting requirements. Moreover, persons already holding public office but who do not intend to seek reelection are no longer required to file financial disclosure reports for the year preceding the end of their term. Finally, the filing date for all public officers is changed from April 15 to July 1.
EFFECTIVE DATE:	March 31, 1988

#### *History*

The Campaign Financing Disclosure Act of 1974<sup>1</sup> required candidates for most state, county, and municipal offices to publicly disclose "campaign contributions and expenditures relative to the seeking of public office."<sup>2</sup> Reaction to the Watergate scandal provided the impetus behind the 1974 Act.<sup>3</sup> Violations of the Act could be punished as felonies with fines up to \$5000 or imprisonment up to five years.<sup>4</sup> The State Campaign Ethics Commission was created as the administrative body to regulate and oversee compliance with the 1974 Act.<sup>5</sup>

In 1975 the Georgia General Assembly amended the statute, changed

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1. 1974 Ga. Laws 155.

2. *Id.* at 156.

3. Wells and Cowles, *State Politicians Have Little to Fear From Ethics Act Changes*, Atlanta J. & Const., Mar. 13, 1988, at 12A, col. 4.

4. 1974 Ga. Laws 155, 162.

5. *Id.* at 161.

the name of the Act, and created the State Ethics Commission to replace the State Campaign Ethics Commission.<sup>6</sup> The duties of the new Commission still included preparing and disseminating campaign disclosure reports as well as investigating any complaints filed by persons who believed the Act had been violated.<sup>7</sup> The 1975 amendment also reduced the penalties for violating the Act so that a first offense could be punished as a misdemeanor; however, all subsequent offenses could be charged as felonies.<sup>8</sup>

Campaign disclosure filing requirements were further modified in 1976. Candidates for state offices covered by the statute were required to file copies of their campaign disclosure statements in the county of their residence as well as with the Secretary of State.<sup>9</sup> In 1977 the legislature changed the name of the State Ethics Commission to the State Campaign and Financial Disclosure Commission.<sup>10</sup> The amended Act also prevented persons who were officers of political parties from serving on the Commission<sup>11</sup> and authorized the Commission to impose civil penalties for violations.<sup>12</sup>

In 1979 the Act was amended to require filing of financial reports of contributions to recall campaigns of elected public officials, as well as of contributions intended to influence voting on proposed constitutional amendments or statewide referendums.<sup>13</sup> In 1980 the Act was further amended to regulate contributions and expenditures made for voter influencing in relation to any question on a ballot in a county or city election.<sup>14</sup> In 1981 the Act was amended to require reporting of campaign contributions made to members of the General Assembly during a legislative session.<sup>15</sup>

In 1984 the General Assembly amended the Act to compel candidates for state office to file statements disclosing all direct ownership interests of more than ten percent, or ownership interests having a fair market value of more than \$20,000.<sup>16</sup> The requirement applied to business entities and to real and intangible property.<sup>17</sup> The 1984 amendments also provided that campaign financial disclosure reports be filed with the elec-

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6. 1975 Ga. Laws 1120.

7. *Id.* at 1130.

8. *Id.* at 1133.

9. 1976 Ga. Laws 1424.

10. 1977 Ga. Laws 1302, 1309.

11. *Id.* at 1309.

12. *Id.* at 1311 (each failure to file a report required by the Act subject to a civil penalty not to exceed \$100).

13. 1979 Ga. Laws 602.

14. 1980 Ga. Laws 725.

15. 1981 Ga. Laws 851.

16. 1984 Ga. Laws 764, 774.

17. *Id.*

tion superintendent of the county where the candidate resided.<sup>18</sup>

In 1986 the General Assembly repealed the Campaign and Financial Disclosure Act and enacted the Ethics in Government Act.<sup>19</sup> The detailed provisions for the powers and duties of the Commission<sup>20</sup> and for the initiation of complaints<sup>21</sup> under the revised Act were enacted primarily in reaction to the Georgia Labor Commission Chairman's prosecution for misappropriation of campaign funds.<sup>22</sup> This legislation, along with subsequent clarifying amendments in 1987,<sup>23</sup> also replaced the State Campaign and Financial Disclosure Commission with the State Ethics Commission.

The 1986 Act initiated strict reporting requirements in response to constituents' concerns that politicians were using campaign contributions for personal expenditures unrelated to seeking an elected office.<sup>24</sup> The 1986 Act required candidates to maintain a separate campaign depository account,<sup>25</sup> to keep detailed accounts of all contributions received and expenditures made,<sup>26</sup> and to account for unused campaign contributions.<sup>27</sup> However, the Commission does not routinely audit campaign finance reports unless a specific complaint is lodged because it lacks adequate funding and staff to do so; therefore, the stringent reporting requirements are not as effective as they might be.<sup>28</sup>

#### SB 564

SB 564 underwent several changes during the legislative process. Both proponents and opponents of the Act agree that it was intended to fulfill the Ethics Commission's requests for improvement in administrative procedure.<sup>29</sup> However, they disagree on whether the new Act weakens the

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18. 1984 Ga. Laws 1100, 1101.

19. 1986 Ga. Laws 957.

20. *Id.* at 966.

21. *Id.* at 969.

22. Telephone interview with Senator Eugene P. Walker, Senate District No. 43 (Apr. 14, 1988) [hereinafter Walker Interview]; *see also* Wells and Cowles, *supra* note 3, at 1A, col. 5; *see generally* Caldwell v. Bateman, 252 Ga. 144, 312 S.E.2d 320 (1984) (holding that the State Campaign and Financial Disclosure Commission acted in excess of its statutory authority by engaging in an extensive public investigation of Georgia Commissioner of Labor Caldwell without providing him the elements of due process).

23. 1987 Ga. Laws 297.

24. Walker Interview, *supra* note 22.

25. 1986 Ga. Laws 957. HB 564 retained the reporting requirements of the 1986 Act. *See* O.C.G.A. § 21-5-30(b), (c) (Supp. 1988).

26. *Id.*

27. O.C.G.A. § 21-5-33 (1987).

28. Wells and Cowles, *supra* note 3, at 1A, col. 1.

29. Telephone interview with Representative Denmark Groover, Jr., House District No. 99 (Apr. 14, 1988) [hereinafter Groover Interview]; telephone interview with Arthur J. Must, Jr., State Director of Common Cause (Apr. 15, 1988) [hereinafter Must Interview].

ethics law<sup>30</sup> or just relieves candidates and elected public officials from filing requirements that at times "are downright demeaning."<sup>31</sup>

The maximum criminal penalty for a violation of the Act made "knowingly" was reduced to a misdemeanor.<sup>32</sup> This is a significant change from prior law which imposed a maximum penalty of a \$5000 fine and five years imprisonment for knowing violations.<sup>33</sup> SB 564 did not affect civil penalties; they may still be imposed by the Commission after a proper investigation.<sup>34</sup>

The Act alters the language of several Code sections to provide that a candidate who does not have a campaign committee will be responsible for those duties which would otherwise be performed by the committee.<sup>35</sup> The legislature intended to provide for flexibility in reporting information required by the Act as well as to provide candidates, who neither need nor desire a formal campaign committee, the option of not forming a committee.<sup>36</sup> Under the Act, such candidates will be allowed to meet the campaign filing requirements without the additional and often unnecessary expense of forming a campaign committee.

A floor amendment to the House committee substitute prohibited contributions from anyone to a member of a county or municipal governing authority from one year before and one year after the governing authority considered any matter concerning the contributor.<sup>37</sup> This controversial amendment was intended to secure unbiased rulings by the governing authority.<sup>38</sup> The House floor amendment was omitted from the final bill.<sup>39</sup> An opponent of the amendment, noting that the amendment was intended to control contributions made in connection with zoning matters, expressed concern that the prohibition was overly broad and would apply equally to issues other than zoning.<sup>40</sup> Others expressed concern that such a provision would stifle contributions to any incumbent public official.<sup>41</sup>

The bill, as introduced, deleted the requirement that one running for a statewide office must file a copy of the campaign contribution disclosure report in the county of residence as well as filing with the Secretary of

30. See League of Women Voters of Georgia, Inc., *Legislative Newsletter* (Mar. 11, 1988) at 17 (copy on file at Georgia State University Law Review office).

31. Walker Interview, *supra* note 22.

32. O.C.G.A. § 21-5-9 (Supp. 1988).

33. 1975 Ga. Laws 1120, 1133.

34. O.C.G.A. § 21-5-6(b)(14)(C) (1987).

35. O.C.G.A. §§ 21-5-30, -32, -34 (Supp. 1988).

36. Telephone interview with Senator Edward Hine, Jr., Senate District No. 52 (Apr. 15, 1988) [hereinafter Hine Interview].

37. SB 564 (HCSFA), 1988 Ga. Gen. Assem.

38. Groover Interview, *supra* note 29.

39. SB 564 (HCSSFA), 1988 Ga. Gen. Assem. This amendment was introduced by Senator Culver Kidd, Senate District No. 25.

40. Groover Interview, *supra* note 29.

41. *Id.*

State.<sup>42</sup> However, the House Committee on Rules reinstated the local filing requirement for candidates for membership in the General Assembly.<sup>43</sup> The procedures for campaign disclosure reports by contributors other than the candidate or candidate's committee are the same as for the candidate.<sup>44</sup>

HB 564 would have eliminated the filing of campaign finance information by county and municipal candidates unless contributions exceeded \$10,000.<sup>45</sup> The Senate committee substitute amended the amount to \$5000.<sup>46</sup> The Senate amended the amount to \$101,<sup>47</sup> and the House Committee on Rules deleted the provision altogether.<sup>48</sup>

The Act revises Code section 21-5-50 relating to filing requirements for state, county, and municipal public officers and candidates.<sup>49</sup> The Act changes the filing date of financial disclosure statements from April 15 to July 1.<sup>50</sup> The 1986 Act required elected officials to file twice in the year in which they ran.<sup>51</sup>

Reports are to be filed with different filing officers depending upon the constituents served by the public officer or candidate.<sup>52</sup> The filing officer, rather than the Secretary of State, will be responsible for reviewing each statement.<sup>53</sup> The Act also adds a requirement that the filing officer notify the Commission of candidates or officials who fail to file within ten days after the financial disclosure statement is due.<sup>54</sup>

The Act permits those who already hold public office and are not running for reelection to the same office or any other public office to forego filing a financial disclosure statement.<sup>55</sup> Several citizen groups<sup>56</sup> expressed concern that "a conflict of interest could go unnoticed"<sup>57</sup> when a public officer, not running for another term but remaining in office for possibly six more months, is allowed to skip the financial disclosure form for the

42. SB 564, as introduced, 1988 Ga. Gen. Assem.

43. O.C.G.A. § 21-5-34(a)(1) (Supp. 1988).

44. O.C.G.A. § 21-5-31(a) (Supp. 1988).

45. SB 564, as introduced, 1988 Ga. Gen. Assem.

46. SB 564 (SCS), 1988 Ga. Gen. Assem.

47. SB 564 (SCSFA), 1988 Ga. Gen. Assem.

48. O.C.G.A. § 21-5-34 (Supp. 1988).

49. O.C.G.A. § 21-5-50 (Supp. 1988).

50. *Id.*

51. 1986 Ga. Laws 956, 979—80.

52. O.C.G.A. § 21-5-50(a)(1) provides that candidates for state office file a financial disclosure statement with the Secretary of State; subsection (a)(2) requires that candidates for county office file with the election superintendent of the county of election; subsection (a)(3) requires that candidates for municipal office file with the municipal clerk of the municipality of election.

53. O.C.G.A. § 21-5-50(a)(4) (Supp. 1988).

54. O.C.G.A. § 21-5-53 (Supp. 1988).

55. O.C.G.A. § 21-5-50(a)(5) (Supp. 1988).

56. Must Interview, *supra* note 29.

57. League of Women Voters of Ga., Inc., *Legislative Newsletter* (Feb. 26, 1988) at 7 (copy on file at Georgia State University Law Review office).

previous year. However, the General Assembly adopted without challenge the provision as introduced in the original bill.<sup>58</sup>

Perhaps the most controversial change to the Act related to items which must be disclosed in the financial statement. Under prior law, direct ownership interests requiring identification included intangible property and interests in business entities and real property if the officer or candidate owned more than a ten percent interest in the property, or if the interest in question had a fair market value of more than \$20,000.<sup>59</sup>

SB 564 deleted intangible property interests of any amount from financial or campaign disclosure statements.<sup>60</sup> In addition, the Act provided that the "net" fair market value is to be used as the basis to calculate the \$20,000 ownership interest.<sup>61</sup> One legislator, opposed to this provision, described the potential for abuse thus:

A public officer could have a \$10,000 ownership interest in property which is worth \$500,000 but has an indebtedness of \$490,000. [Under the Act, the official would not have to report the property interest]. If the governing body on which the publicly elected official sits decides upon an improvement to land of which the officer's property is a part, the property value could be significantly increased, bettering the public officer's situation as a landowner.<sup>62</sup>

The amendments to the Ethics in Government Act which simplify financial reporting for candidates and officials are intended to facilitate greater compliance with the Act, thus promoting accountability in government.<sup>63</sup> While some think the Act is a "step back away from open government,"<sup>64</sup> others say the bill simply makes the reporting requirements practicable.<sup>65</sup>

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58. Compare SB 564, as introduced, 1988 Ga. Gen. Assem. with O.C.G.A. § 21-5-50 (Supp. 1988). SB 564 was introduced by Senator Culver Kidd, Senate District No. 25.

59. 1986 Ga. Laws 957, 980.

60. O.C.G.A. § 21-5-50(b)(3) (Supp. 1988).

61. O.C.G.A. § 21-5-50(b)(3)(B) (Supp. 1988). The 1986 Act measured the ownership interest by the "fair market value of more than \$20,000." 1986 Ga. Laws 957, 980.

62. Hine Interview, *supra* note 36.

63. Walker Interview, *supra* note 22.

64. Secrest, *Extension Ok'd on Disclosure by Georgia Officials*, Atlanta J. & Const., Apr. 14, 1988 at 1C, col. 6 (quoting Secretary of State Max Cleland).

65. Walker Interview, *supra* note 22.