

SENATE BILL 222<sup>1</sup>: PRIMARIES AND ELECTIONS; ALL COSTS AND EXPENSES  
RELATING TO ELECTION ADMINISTRATION ARE PAID FOR WITH  
LAWFULLY APPROPRIATE PUBLIC FUNDS; PROVIDE

*Amending O.C.G.A. § 21-2-30; § 21-2-71; § 21-2-212*

**First signature:** Senator Max Burns (23rd)

**Co-Sponsors:** Senator Sam Watson (11th), Chuck Payne (54th), Clint Dixon (45th), Frank Ginn (47th), Jason Anavitarte (31st), Rick Williams (25th), Ben Watson (1st), Lee Anderson (24th), Randy Robertson (29th), Shawn Still (48th), John Albers (56th), Mary Harbin (16th), Steve Gooch (51st)

**Summary:** “A BILL to be entitled an Act to amend Chapter 2 of Title 21 of the O.C.G.A, relating to primaries and elections generally, so as to provide that all costs and expenses relating to election administration are paid for with lawfully appropriate public funds; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** This bill became effective on May 2, 2023.<sup>3</sup>

TEXT OF SENATE BILL 222<sup>4</sup>

**SECTION 1.**

The General Assembly finds that the addition of Code Section 21-2-18 and the revisions to Code Sections 21-2-71 and 21-2-212 in this bill should not be interpreted as an admission by the General Assembly that existing law did not already ban the outside funding of election administration in Georgia. These clarifications and enhancements were deemed necessary because there

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<sup>1</sup> Senate Bill 222, 157<sup>th</sup> Gen. Assemb., 1st Reg. Sess. (Ga. 2023), <https://gov.georgia.gov/document/2023-signed-legislation/sb-222/download> (last visited Oct. 1, 2023).

<sup>2</sup> 2022-2023 Regular Session Senate Bill 222, PRIMARIES AND ELECTIONS; ALL COSTS AND EXPENSES RELATING TO ELECTION ADMINISTRATION ARE PAID FOR WITH LAWFULLY APPROPRIATE PUBLIC FUNDS; PROVIDE, GA. GEN. ASSEMB., <https://www.legis.ga.gov/legislation/64653> (last visited Oct. 1, 2023) [hereinafter Senate Bill 222 Status Sheet].

<sup>3</sup> *Id.*

<sup>4</sup> Senate Bill 222, *supra* note 1.

seemed to be some confusion among certain Georgia counties as to the correct interpretation of existing law.

## SECTION 2.

Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and primaries generally, is amended by adding a new Code section to read as follows:

"21-2-18.

(a) As used in this Code section, the term:

(1) 'Government employee' means any individual, committee, entity, or group acting in concert who are employed by a county or municipal government. Such term shall include, but not be limited to, election superintendents, registrars, poll workers, and the agents and employees thereof.

(2) 'Person' means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, association, committee, corporation, whether operated for profit or not, or any other organization of a group of persons acting in concert, or any other nongovernmental third-party entity.

(b) All costs and expenses related to conducting primaries, elections, runoffs, or other undertakings authorized or required by this chapter shall be paid from lawfully appropriated public funds.

(c) Notwithstanding any other provision of law to the contrary, no county or municipal government, government employee, or election official shall solicit, take, or otherwise accept from any person a contribution, donation, service, or anything else of value for the purpose of conducting primaries or elections or in support of performing his or her duties under this chapter.

(d) This Code section shall not apply to the donation or use of locations for voting purposes, services provided by individuals without remuneration, or goods that have nominal value of less than \$500.00.

(e) Violation of this Code section shall constitute a felony, and upon conviction shall be punished by imprisonment for not less than one year and by a fine of not less than \$10,000.00."

## SECTION 3.

Said chapter is further amended by revising Code Section 21-2-30, relating to creation, composition, election of chairperson, terms of service, vacancies, quorum, seal and bylaws, and meetings of the State Election Board, as follows:

"21-2-30.

(a) There is created a state board to be known as the State Election Board, to be composed of a chairperson elected by the General Assembly, an elector to be elected by a majority vote of the Senate of the General Assembly at its regular session held in each odd-numbered year, an elector to be elected by a majority vote of the House of Representatives of the General Assembly at its regular session held in each odd-numbered year, and a member of each political party to be nominated and appointed in the manner provided in this Code section. No person while a member of the General Assembly shall serve as a member of the board.

(a.1)(1) The chairperson shall be elected by the General Assembly in the following manner: A joint resolution which shall fix a definite time for the nomination and election of the chairperson may be introduced in either branch of the General Assembly. Upon passage of the resolution by majority vote of the membership of the Senate and House of Representatives, it shall be the duty of the Speaker of the House of Representatives to call for the nomination and election of the chairperson at the time specified in the resolution, at which time the name of the qualified person receiving a majority vote of the membership of the House of Representatives shall be transmitted to the Senate for confirmation. Upon the qualified person's receiving a majority vote of the membership of the Senate, he or she shall be declared the duly elected chairperson; and the Governor shall be notified of his or her election by the Secretary of the Senate. The Governor is directed to administer the oath of office to the chairperson and to furnish the chairperson with a properly executed commission of office certifying his or her election.

(2) The chairperson of the board shall be nonpartisan. At no time during his or her service as chairperson shall the chairperson actively participate in a political party organization or in the campaign of a candidate for public office, nor shall he or she make any campaign contributions to a candidate for public office. Furthermore, to qualify for appointment as chairperson, in the two years immediately preceding his or her appointment, a person shall not have qualified as a partisan candidate for public office, participated in a political party organization or the campaign of a partisan candidate for public office, or made any campaign contributions to a partisan candidate for public office.

(3) The term of office of the chairperson shall continue until a successor is elected as provided in paragraph (1) of this subsection. In the event of a vacancy in the position of chairperson at a time when

the General Assembly is not in session, it shall be the duty of the Governor and the Governor is empowered and directed to appoint a chairperson possessing the qualifications as provided in this subsection who shall serve as chairperson until the next regular session of the General Assembly, at which time the nomination and election of a chairperson shall be held by the General Assembly as provided in paragraph (1) of this subsection.

(b) A member elected by a house of the General Assembly shall take office on the day following the adjournment of the regular session in which elected and shall serve for a term of two years and until his or her successor is elected and qualified, unless sooner removed. An elected member of the board may be removed at any time by a majority vote of the house which elected him or her. In the event a vacancy should occur in the office of such a member of the board at a time when the General Assembly is not in session, then the President of the Senate shall thereupon appoint an elector to fill the vacancy if the prior incumbent of such office was elected by the Senate or appointed by the President of the Senate; and the Speaker of the House of Representatives shall thereupon appoint an elector to fill the vacancy if the prior incumbent of such office was elected by the House of Representatives or appointed by the Speaker of the House of Representatives. A member appointed to fill a vacancy may be removed at any time by a majority vote of the house whose presiding officer appointed him or her.

(c) Within 30 days after April 3, 1968, the state executive committee of each political party shall nominate a member of its party to serve as a member of the State Election Board and, thereupon, the Governor shall appoint such nominee as a member of the board to serve for a term of two years from the date of the appointment and until his or her successor is elected and qualified, unless sooner removed. Thereafter, such state executive committee shall select a nominee for such office on the board within 30 days after a vacancy occurs in such office and shall also select a nominee at least 30 days prior to the expiration of the term of each incumbent nominated by it; and each such nominee shall be immediately appointed by the Governor as a member of the board to serve for the unexpired term in the case of a vacancy, and for a term of two years in the case of an expired term. Each successor, other than one appointed to serve an unexpired term, shall serve for a term of two years; and the terms shall run consecutively from the date of the initial gubernatorial appointment. No person shall be eligible for nomination by such state executive committee unless he or she is an elector and a member in good standing of the political party of the committee. Such a member shall

cease to serve on the board and his or her office shall be abolished if and when his or her political organization shall cease to be a 'political party' as defined in Code Section 21-2-2.

(d) The Secretary of State shall be an ex officio nonvoting member of the board. Three voting members of the board shall constitute a quorum, and no vacancy on the board shall impair the right of the quorum to exercise all the powers and perform all the duties of the board. The board shall adopt a seal for its use and bylaws for its own government and procedure.

(e) Meetings shall be held whenever necessary for the performance of the duties of the board on call of the chairperson or whenever any two of its members so request. Minutes shall be kept of all meetings of the board and a record kept of the vote of each member on all questions coming before the board. The chairperson shall give to each member of the board prior notice of the time and place of each meeting of the board.

(f) If any member of the board, other than the Secretary of State, shall qualify as a candidate for any public office which is to be voted upon in any primary or election regulated by the board, that member's position on the board shall be immediately vacated and such vacancy shall be filled in the manner provided for filling other vacancies on the board.

(g) On and after July 1, 2023, the board shall be a separate and distinct budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act'; provided, however, that the board shall be attached for administrative purposes only to the office of the Secretary of State as provided for in Code Section 50-4-3. The board shall neither be under the jurisdiction of the Secretary of State nor shall it be considered a division of the office of the Secretary of State.

(h) The board shall have the power to appoint an executive director who shall be a full-time employee of the board. The executive director shall serve at the pleasure of the board, and the board shall in its discretion appoint and fix the compensation of the executive director. The executive director shall be charged with such duties and powers as provided in this Code section or as delegated by the board. The executive director shall serve as the secretary of the board ex officio but shall not be a voting member of the board or a member for the purposes of constituting a quorum.

(i) The executive director and other employees of the board shall be reimbursed for travel and other expenses incurred in the performance of their duties in the same manner as officers and employees of the office of the Secretary of State.

(j) Venue of any action involving members of the board shall be the county in which is found the primary office of the board. Any notice or legal process necessary to be served upon the board may be served upon the executive director, but the executive director shall not be considered a member of the board in determining the venue of any such action, and no court shall have jurisdiction over any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction.

(k) The executive director shall:

(1) Keep all records of the board and its proceedings;

(2) With the approval of the board, employ and fix the compensation of personnel as determined necessary to assist the executive director in his or her duties;

(3) With the consent of the board, schedule the time and location of all meetings and hearings, as well as maintain a schedule of all meetings and hearings available for public review;

(4) With the approval of the board, enter into such contracts, leases, agreements, or other transactions with any person or agency as are deemed necessary to carry out the provisions of this chapter or to provide the services required by the board; and

(5) On or before the second Tuesday in January of each year, prepare and deliver a written annual report to the Governor and the chairpersons of the House and Senate Appropriations Committees describing the activities of the board for the previous calendar year. Such report shall be made available to any member of the General Assembly upon request. The report shall include a summary of all actions taken by the board and a financial report of all income and disbursements and staff personnel. The Governor may request a preliminary financial report for budgetary purposes prior to the executive director delivering the annual report."

#### SECTION 4.

Said chapter is further amended by revising subsection (b) of Code Section 21-2-71, relating to payment by county or municipality of superintendent's expenses, and study and report on acceptance and equitable distribution of donations, as follows:

"(b) No superintendent, county, or municipality shall take or accept any funding, grants, or gifts for purposes of administering this chapter from any source other than from the governing authority of the county or municipality, the State of Georgia, or the federal government."

**SECTION 5.**

Said chapter is further amended in Code Section 21-2-212, relating to county registrars, appointment, certification, term of service, vacancies, compensation, and expenses of chief registrar, registrars, and other officers and employees, and budget estimates, by revising subsection (f) as follows:

"(f) The board of registrars of each county shall prepare annually a budget estimate in which it shall set forth an itemized list of its expenditures for the preceding two years and an itemized estimate of the amount of money necessary to be appropriated for the ensuing year and shall submit the same at the time and in the manner and form other county budget estimates are required to be filed. No board of registrars shall take or accept any funding, grants, or gifts for the purpose of administering this chapter from any source other than ~~from the governing authority of the county,~~ the State of Georgia, or the federal government."

**SECTION 6.**

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

**SECTION 7.**

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

## SPONSORS' RATIONALE

Since the 2020 Presidential Election, accusations of election interference on both sides of the aisle have inflamed the country.<sup>5</sup> In response to this turmoil and lack of faith in the election system, Senator Max Burns (“Senator Burns”) sponsored Senate Bill 222 (“Senate Bill 222”) to ensure that elections are “held and conducted fairly and ethically” by prohibiting local governments and officials from soliciting or accepting donations to support election administration.<sup>6</sup> Individuals who violate the law will potentially face a felony conviction, punishable by at least one year in prison and a fine of up to \$10,000.<sup>7</sup> Senator Burns, Chairman of the Senate Committee on Ethics, asserts that this bill will prevent outside groups and individuals from exerting influence on county election workers.<sup>8</sup>

The Bill clarifies the Election Integrity Act of 2021 (“Election Integrity Act”), a controversial omnibus bill that added a number of restrictions on the election process in Georgia.<sup>9</sup> One of the restrictions Senate Bill 222 clarifies criminalizes the act of election officials accepting money from third-parties.<sup>10</sup> Senator Burn’s sponsorship of Senate Bill 222 followed Dekalb County’s acceptance of a \$2 million dollar grant from the U.S. Alliance for Election

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<sup>5</sup> Samuel Benson, *Poll: Both Democrats and Republicans blame fraud for most recent presidential election losses*, DESERET NEWS (Dec. 19, 2023), <https://www.deseret.com/2023/12/19/23982742/poll-election-fraud-democrats-and-republicans>.

<sup>6</sup> Sydney Horwitz, *Georgia General Assembly Passes Legislation to Appropriate Primary and Election Funds*, SENATE PRESS (Mar. 31, 2023), <https://senatepress.net/georgia-general-assembly-passes-legislation-to-appropriate-primary-and-election-funds.html>.

<sup>7</sup> Senate Bill 222, *supra* note 1.

<sup>8</sup> Horwitz, *supra* note 6.

<sup>9</sup> Stephen Fowler, *What Does Georgia’s New Voting Law SB 202 Do?*, GEORGIA PUBLIC BROADCASTING (Mar. 27, 2021), <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>.

<sup>10</sup> Jeff Amy, *Kemp Signs Bill to Ban Outside Election Cash in Georgia*, U.S. NEWS & WORLD REPORT (May. 3, 2023), <https://www.usnews.com/news/best-states/georgia/articles/2023-05-03/kemp-signs-bill-to-ban-outside-election-cash-in-georgia>.



Excellence, a program launched by the non-profit Center for Tech and Civic Life (“CTCL”).<sup>11</sup> The organization is connected to Facebook CEO Mark Zuckerberg, who heavily contributed to the program’s funds.<sup>12</sup> Conservatives widely condemned Dekalb, insisting the grant was a thinly-veiled attempt to skirt the law.<sup>13</sup> CTCL doled out \$45 million to Georgia counties, including 17 of the 31 that President Joe Biden won in Georgia.<sup>14</sup> Those 17 counties received over 94% of all CTCL funds in the state.<sup>15</sup> While there is no direct evidence that the grants resulted in any foul play, Republicans criticized the optics of a county government conspiring with an out-of-state billionaire to “bankroll elections” by increasing voter turnout for a particular party.<sup>16</sup>

Supporters of Senate Bill 222 echo similar sentiments. Senator Burns emphasized the unfairness of private individuals and companies picking and choosing which counties to donate to.<sup>17</sup> Senator Rick Williams, a co-sponsor of the Bill, stated it was a “much needed step to ensure that our state’s elections are fair for all Georgians.”<sup>18</sup> Lieutenant Governor Burt Jones made a more pointed reference to the grant, thanking Senator Burns for introducing the Bill and adding, “woke and out-of-touch businesses outside of this state should not meddle with our local elected officials.”<sup>19</sup> A former version of the Bill included a requirement that DeKalb County pay back the \$2 million

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<sup>11</sup> Fred Lucas, *American Elections Shouldn’t be Bankrolled By Billionaires*, THE HERITAGE FOUNDATION (Apr. 13, 2023), <https://www.heritage.org/election-integrity/commentary/american-elections-shouldnt-be-bankrolled-billionaires>.

<sup>12</sup> Lucas, *supra* note 11.

<sup>13</sup> Amy, *supra* note 10.

<sup>14</sup> Parker Thayer, *Shining a Light on Zuck Bucks in the 2020 Battleground States*, CAPITAL RESEARCH CENTER (Jan. 18, 2022), <https://capitalresearch.org/article/shining-a-light-on-zuck-bucks-in-key-states/>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Georgia State Senate, Legislative Day 27 (Part 3), VIMEO, (Mar. 2, 2023), <https://vimeo.com/showcase/9076378?video=804107021>.

<sup>18</sup> *Legislation Addressing Election Interference Introduced*, OFFICE OF THE LIEUTENANT GOVERNOR OF GEORGIA (Feb. 23, 2023), <https://ltgov.georgia.gov/press-releases/2023-02-23/legislation-addressing-election-interference-introduced>.

<sup>19</sup> *Id.*

dollar grant, but the House Rules Committee removed it as it would be an unconstitutional ex post facto law.<sup>20</sup>

While Senate Bill 222 prohibits counties from directly taking third-party funding, outside organizations and individuals can still contribute to the administration of elections.<sup>21</sup> However, they have to donate directly to the State Elections Board who will choose how to divide the funds.<sup>22</sup> Senator Burns contends that this will keep elections fair and support the purpose of the Election Integrity Act, which was to make it “easy to vote and hard to cheat.”<sup>23</sup>

#### OPPOSITION’S RATIONALE

Critics of Senate Bill 222 are skeptical of the Bill’s alleged goal of fair elections, characterizing it as a partisan attack on voting rights that will shift the cost burden of election administration to the electorate.<sup>24</sup> Democrats maintain it was “widely understood” that even though the Election Integrity Act banned election officials themselves from accepting donations, counties were still able to.<sup>25</sup> Given that the earlier version of the Bill sought to make Democrat-heavy DeKalb County return their grant, it appears to some that the Bill’s true purpose is to punish larger counties who have struggled to meet the expensive election-related demands placed on them by the legislature.<sup>26</sup> Senator Elena Parent (“Senator Parent”), the Democratic Caucus Chair, emphasized that such donations became vital after the Election Integrity Act expanded administrative burdens on election boards without increasing funding.<sup>27</sup>

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<sup>20</sup> Shania Shelton, *Georgia legislature passes bill criminalizing private funds to election offices*, CNN (Mar. 29, 2023), <https://www.cnn.com/2023/03/29/politics/georgia-bill-criminalize-private-funds-elections/index.html>.

<sup>21</sup> Georgia State Senate, *supra* note 17.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Shelton, *supra* note 20.

<sup>25</sup> Amy, *supra* note 10.

<sup>26</sup> *Id.*

<sup>27</sup> Georgia State Senate, *supra* note 17.

Some of these new requirements include having staff count ballots “nonstop” once polls close, laborious calibration of every piece of technology used in the election, and forcing counties to hire more staff if their wait times hit over an hour.<sup>28</sup> Local election officials have become so overwhelmed with the looming threats of staffing problems and pay breaks that they say their private messages to each other, “read like a group therapy session.”<sup>29</sup> Counties will likely have to resort to raising taxes to meet election costs, and voters may still feel the weight when they stand in long lines to cast their ballot.<sup>30</sup> Rather than tying the hands of county election boards, Senator Parent insisted the state step up and fund the mandates that it has required.<sup>31</sup> While the Bill allows third-party funds to be taken and distributed by the Republican-dominated State Elections Board, opponents such as Senator Sally Harrell question why the sponsors did not provide some sort of distribution formula that would account for population variance like education grants do.<sup>32</sup> Without such a formula, opponents argue that the “equally” distributed donations will be a mere drop in the ocean to larger counties facing increasingly heavy voting traffic.<sup>33</sup>

In response to the argument that third-party donations have or will lead to unethical behavior by election officials, opponents assert that such claims are unsubstantiated.<sup>34</sup> Supporters of the Bill, and others like it around the nation, have failed to provide evidence that donations to counties result in corruption, according to the Bill’s opponents.<sup>35</sup> Senator Parent remarked that the funds were not being used to generate more turnout for a particular party, but rather to keep elections efficient in densely-populated counties so that all Georgians could exercise their right to vote unburdened.<sup>36</sup> While Republicans have attacked the optics of Mark Zuckerberg’s participation in

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<sup>28</sup> Fowler, *supra* note 9.

<sup>29</sup> Georgia State Senate, *supra* note 17.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Amy, *supra* note 10.

<sup>35</sup> *Id.*

<sup>36</sup> Georgia State Senate, *supra* note 17.

the 2020 donations, the CTCL invited every single election jurisdiction in the country to apply regardless of party demographics, and all 2,500 applicants across 49 states received funds.<sup>37</sup> Democrats emphasize how these grants served as a critical lifeline for election administrators who were drowning during the COVID-19 pandemic, enabling them to buy new machines capable of handling the surge in mail-in ballots, open more voting sites and drop boxes, and provide personal protective equipment to poll workers.<sup>38</sup>

Challengers to Senate Bill 222 view the prohibition of donations as hypocritical, highlighting the State's allowance of law enforcement offices to accept donations and even offering a tax credit of \$5,000 dollars to private entities and individuals who contribute.<sup>39</sup> Millions of dollars have been funneled from large corporations like Dunkin Donuts to local law enforcement through groups like the Atlanta Police Foundation.<sup>40</sup> The divisive "Cop City" project, which would create an 85-acre training facility in Atlanta for police, was enabled by the Atlanta Police Foundation when they agreed to fundraise \$60 million dollars for it.<sup>41</sup> A number of executives from other big-name companies sit on the Atlanta Police Foundation Board, such as Delta, Georgia-Pacific, and Wells Fargo.<sup>42</sup> Critics say that allowance of these capital injections to the police by massive corporations mirrors the

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<sup>37</sup> Miles Parks, *Private funding saved the 2020 election. Now, some GOP-led states are banning it*, NPR (Mar. 31, 2023), <https://www.npr.org/2022/03/31/1088252896/private-funding-saved-the-2020-election-now-some-gop-led-states-are-banning-it>.

<sup>38</sup> Mac Brower, *The Republican Election Law That Could Bankrupt Our Elections*, DEMOCRACY DOCKET (Apr. 19, 2022), <https://www.democracydocket.com/analysis/the-republican-election-law-that-could-bankrupt-our-elections/>.

<sup>39</sup> ACLU of Georgia Testimony on SB 222, YOUTUBE, (Feb. 27, 2023), [https://www.youtube.com/watch?v=BrR\\_C48aYiU&t=2s](https://www.youtube.com/watch?v=BrR_C48aYiU&t=2s).

<sup>40</sup> Morgan Simon, *Cops and Donuts Go Together More Than You Thought: The Corporations Funding Cop City in Atlanta*, FORBES (Mar. 14, 2023), <https://www.forbes.com/sites/morgansimon/2023/03/14/cops-and-donuts-go-together-more-than-you-thought-the-corporations-funding-cop-city-in-atlanta/?sh=44119db66bc6>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

allegations that billionaires are “bankrolling” elections by donating to counties.<sup>43</sup>

#### IMPLICATIONS IN GEORGIA

Senate Bill 222 prevents counties from accepting third-party grants to put towards election administration, meaning counties will have to make up for the loss by raising taxes.<sup>44</sup> County election offices will need to make some tough decisions regarding where they put their money, likely resulting in fewer poll workers and complicating the process for Georgia voters.<sup>45</sup> These effects will be most heavily felt in populous counties like Dekalb, Fulton, and Cobb.<sup>46</sup> Similar bills have been passed around the country; twenty-four states in total now prohibit, limit, or regulate the use of private funding in running elections.<sup>47</sup> All of these bills were enacted after 2020, meaning the first major election to feel the impact will be the 2024 Presidential Election.<sup>48</sup>

Despite the sponsors’ intentions to ensure election integrity in the state, the Bill may actually undermine it. Donations that will now be felonious could have given Georgia counties the funding necessary to pursue pricey security improvements that legislators have been advocating for.<sup>49</sup> Georgia Secretary of State Brad Raffensperger (“Raffensperger”) recently asked budget writers for more money to instate an absentee ballot tracking service, data for polling place check-in tablets, and \$4 million dollars to replace heavy battery backup power supplies for voting machines.<sup>50</sup> Raffensperger

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<sup>43</sup> ACLU, *supra* note 39.

<sup>44</sup> Shelton, *supra* note 20.

<sup>45</sup> Shelton, *supra* note 20.

<sup>46</sup> *Id.*

<sup>47</sup> *Prohibiting Private Funding of Elections*, NATIONAL CONFERENCE OF STATE LEGISLATURES (July. 25, 2023), <https://www.ncsl.org/elections-and-campaigns/prohibiting-private-funding-of-elections>

<sup>48</sup> *Id.*

<sup>49</sup> Brower, *supra* note 38.

<sup>50</sup> Stephen Fowler, *Georgia lawmakers add to the growing list of bans on outside election funding*, NPR (Apr. 5, 2023), <https://www.npr.org/2023/04/05/1167971349/georgia-election-funding-ban#:~:text=In%202021%2C%20Georgia%20lawmakers%20passed,and%20disbursed%20by%20county%20governments.>

emphasized that the current lead-based battery, which weighs 80 pounds, was a significant burden when the average poll worker is over 65 years old. Georgia legislators declined to add the \$4 million, in addition to foregoing many of Raffensperger's other requests.<sup>51</sup> Nonetheless, Republican legislators have continued to demand security improvements after a report by a computer science professor found that there were "critical vulnerabilities" in Georgia systems that, if exploited, could flip votes from one candidate to another.<sup>52</sup> State legislators advocate for eliminating ballot bar codes, adding ballot verification and technology, and installing voting machine upgrades to prevent potential interference.<sup>53</sup> However, these upgrades would come at the estimated cost of \$32.5 million dollars.<sup>54</sup>

Concerns over the potential flaws in Georgia's electronic voting system has triggered a lawsuit in federal court, where plaintiffs have pled for U.S. District Judge Amy Totenberg ("Judge Totenberg") to order the state to use hand-marked paper ballots.<sup>55</sup> Plaintiffs contend that Georgia's electronic system has cybersecurity deficiencies which unconstitutionally burden their First and Fourteenth Amendment rights.<sup>56</sup> Judge Totenberg set the trial date for January 9, 2024 after refusing to grant summary judgment to the State, but did concede that she would not order the use of paper ballots if plaintiffs prevail.<sup>57</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> Mark Niese, *Georgia Election Security Improvements Will Cost \$32.5M*, GOVERNING (Sep. 26, 2023), <https://www.governing.com/finance/georgia-election-security-improvements-will-cost-32-5m>.

<sup>53</sup> Niese, *supra* note 51.

<sup>54</sup> *Id.*

<sup>55</sup> Kate Brumback, *Constitutional challenge to Georgia voting machines set for trial early next year*, AP NEWS (Nov. 11, 2023), <https://apnews.com/article/voting-machines-georgia-lawsuit-cybersecurity-d8a4653211bf19c21d3b9dc2d59a7a61>.

<sup>56</sup> *Id.*

<sup>57</sup> Mark Niese, *Trial set for election security case against Georgia's voting machines*, THE ATLANTA JOURNAL CONSTITUTION (Nov. 13, 2023), <https://www.ajc.com/politics/georgia-election-security-trial-set-as-judge-proposes-a-compromise/LA63ROLPNBGZBBPBGSFRRNV2MM/>.

Through the lawsuit, plaintiffs have exposed an election breach in Coffee County in January 2021, when a nonprofit organization led by Sidney Powell paid computer analysts to copy voting software, ballot images, and other election data.<sup>58</sup> Powell, an attorney who supported former-President Donald Trump's claims that the 2020 election was stolen, pled guilty in Fulton County to six misdemeanor counts of conspiracy to commit intentional interference during the 2020 election.<sup>59</sup> David Cross, an attorney for several of the plaintiffs, stated that the Coffee County breach raises "disturbing implications for easy access to virtually every component of the voting system."<sup>60</sup> If Judge Totenberg finds that there are significant cybersecurity risks in Georgia's system, election administrators will be left floundering to fund the expensive updates necessary without the support of outside donations.<sup>61</sup>

#### LEGISLATIVE GENEALOGY

Senate Bill 222 was entered into Senate Hopper on February 2, 2023.<sup>62</sup> Senate read and referred on February 22, 2023.<sup>63</sup> The Senate committee favorably reported by substitute on February 28, 2023.<sup>64</sup> Senate read second time on March 1, 2023.<sup>65</sup> Senate engrossed March 2, 2023.<sup>66</sup> Senate tabled March 2, 2023.<sup>67</sup> Senate taken from table on March 2, 2023.<sup>68</sup> Senate third read was on March 2, 2023.<sup>69</sup> Senate passed/adopted by substitute on March 2, 2023.<sup>70</sup> House first readers was on March 6, 2023.<sup>71</sup>

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Brower, *supra* note 38.

<sup>62</sup> Senate Bill 222 Status Sheet, *supra* note 2.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Senate Bill 222 Status Sheet, *supra* note 2.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

House second readers was on March 7, 2023.<sup>72</sup> House committee favorably reported by substitute on March 16, 2023.<sup>73</sup> House withdrawn, recommitted on March 20, 2023.<sup>74</sup> House committee favorably reported by substitute on March 21, 2023.<sup>75</sup> House withdrawn, recommitted on March 27, 2023.<sup>76</sup> House third readers on March 27, 2023.<sup>77</sup> House passed/adopted by substitute on March 27, 2023.<sup>78</sup> Senate agreed to House amendment or substitute on March 29, 2023.<sup>79</sup> Senate sent to Governor on April 5, 2023.<sup>80</sup> Governor signed on May 3, 2023.<sup>81</sup> Effective on May 3, 2023.<sup>82</sup>

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<sup>72</sup> Senate Bill 222 Status Sheet, *supra* note 2.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Senate Bill 222 Status Sheet, *supra* note 2.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

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