

House Bill 333

By: Representatives Efration of the 104th, Holcomb of the 81st, Nix of the 69th, and Smyre of the 135th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to ethics
2 in government, so as to revise the powers and duties of the Georgia Government
3 Transparency and Campaign Finance Commission; to provide for and revise a short title; to
4 revise definitions; to revise procedures for the initiation of complaints; to revise requirements
5 for certain accounts, the disposition and expenditure of certain contributions, filings,
6 registrations, and records of accounts; to revise how maximum contribution limits are
7 implemented; to revise purposes requiring registration with the commission; to provide for
8 related matters; to provide for an effective date; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This act shall be known as and may be cited as the "Ethics in Government Act of 2021."

13 **SECTION 2.**

14 Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to ethics in
15 government, is amended by revising Code Section 21-5-1, relating to a short title, as follows:

H. B. 333

16 "21-5-1.

17 This chapter shall be known as and may be cited as the ~~'Ethics in Government Act.'~~
18 'Georgia Government Transparency and Campaign Finance Act.'

19 **SECTION 3.**

20 Said chapter is further amended by revising paragraph (22) of Code Section 21-5-3, relating
21 to definitions, and by adding new paragraphs to read as follows:

22 "(11.1) 'Electioneering communication' means any broadcast, cable or satellite
23 communication, or any internet based advertisement or communication that:

24 (A) Clearly identifies a candidate for office;

25 (B) Is publicly distributed within certain time periods before an election, as established
26 by regulation of the commission; and

27 (C) Is targeted to the electorate."

28 "(16.2) 'Loan' means a thing that is borrowed, especially a sum of money that is expected
29 to be paid back with interest to the lender."

30 "(17.1) 'Membership organization' means any labor organization or trade association or
31 cooperative or other incorporated membership organization that:

32 (A) Is composed of members;

33 (B) Expressly states the qualifications for membership in its articles of incorporation
34 and bylaws;

35 (C) Makes its articles, bylaws, and other organizational documents available to its
36 members;

37 (D) Expressly seeks members;

38 (E) Acknowledges the acceptance of membership, such as by sending membership
39 cards to new members or including them on a membership newsletter list; and

40 (F) Is not organized primarily for the purpose of influencing an election in this state or
41 its political subdivisions.

42 (17.2) 'Nonelection year' shall be construed and applied separately for each elective
43 office and means for each elective office any calendar year during which there is no
44 regular or special election to fill such office.

45 ~~(17.2)~~(17.3) 'Nonprofit organization' means a corporation, foundation, or other legal
46 entity, no part of the net earnings of which inures to the benefit of any private shareholder
47 or individual holding an interest in such entity."

48 "(19.1) 'Personal asset' means any asset in the form of money, chattels, or any item of
49 economic value, including nominal loans, owned by an individual or corporation,
50 especially that which could be converted to cash, including but not limited to, cash,
51 securities, accounts receivable, inventory, office equipment, real estate and automobiles."

52 "(22) 'Public officer' means:

53 (A) The Governor, Lieutenant Governor, Secretary of State, Attorney General,
54 Commissioner of Labor, Commissioner of Agriculture, Commissioner of Insurance,
55 and State School Superintendent ~~Every constitutional officer;~~

56 (B) Every other elected state official not listed in subparagraph (A) of this paragraph;

57 (C) The executive head of every state department or agency, whether elected or
58 appointed;

59 (D) Each member of the General Assembly;

60 (E) The executive director of each state board, commission, council, or authority and
61 the members thereof;

62 (F) Every elected county official and every elected member of a local board of
63 education; and

64 (G) Every elected municipal official."

65 "(25) 'Staff attorney' means a licensed member of the Georgia Bar Association that is
66 employed by the Georgia Government Transparency and Campaign Finance
67 Commission."

68 **SECTION 4.**

69 Said chapter is further amended by revising Code Section 21-5-5, relating to operating
70 expenses, as follows:

71 "21-5-5.

72 The funds necessary to carry out this chapter shall come from the funds appropriated to and
73 available to the commission and from any other available funds. The commission shall be
74 a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act';
75 provided, however, that the commission shall be assigned for administrative purposes only
76 to the ~~Secretary of State~~ State Accounting Office."

77 **SECTION 5.**

78 Said chapter is further amended by revising paragraph (7) of subsection (a) and
79 paragraphs (9), (10), and (23) of subsection (b) of Code Section 21-5-6, relating to powers
80 and duties of the commission, as follows:

81 "(7) To adopt in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
82 Procedure Act,' any rules and regulations necessary and appropriate for carrying out the
83 purposes of this chapter; provided, however, that the commission shall not require the
84 reporting or disclosure of more information on any campaign contribution disclosure
85 report or personal financial disclosure statement than is expressly required to be reported
86 or disclosed by this chapter, ~~unless such information was required to be reported or~~
87 ~~disclosed by rules and regulations of the commission which were in effect as of January~~
88 ~~1, 2013, so long as such rules and regulations do not conflict with this chapter; and"~~

89 "(9) To make investigations, subject to the limitations contained in Code
90 Section 21-5-7.1, with respect to the statements and reports filed under this chapter and
91 with respect to alleged failure to file any statements or reports required under this chapter
92 and upon receipt of the written complaint of any person, including a staff attorney
93 employed by the commission, verified under oath to the best information, knowledge, and

94 belief by the person or staff attorney making such complaint with respect to an alleged
95 violation of any provision of this chapter, provided that nothing in this Code section shall
96 be construed to limit or encumber the right of the commission to initiate on probable
97 cause an investigation on its own cognizance as it deems necessary to fulfill its
98 obligations under this chapter;

99 (10)(A) To conduct a preliminary investigation, subject to the limitations contained in
100 Code Section 21-5-7.1, of the merits of a written complaint by any person, including
101 a staff attorney employed by the commission, who believes that a violation of this
102 chapter has occurred, verified under oath to the best information, knowledge, and belief
103 by the person or staff attorney making such complaint. If there are found no reasonable
104 grounds to believe that a violation has occurred, the complaint shall be dismissed,
105 subject to being reopened upon discovery of additional evidence or relevant material.
106 If the commission determines that there are such reasonable grounds to believe that a
107 violation has occurred, it shall give notice by summoning the persons believed to have
108 committed the violation to a hearing. The hearing shall be conducted in all respects in
109 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
110 The commission may file, through a staff attorney employed by the commission, a
111 complaint charging violations of this chapter, and any person aggrieved by the final
112 decision of the commission is entitled to judicial review in accordance with Chapter 13
113 of Title 50; provided, however, that nothing in this Code section shall be construed to
114 limit or encumber the right of the commission to initiate on probable cause an
115 investigation on its own cognizance as it deems necessary to fulfill its obligations under
116 this chapter.

117 (B) In any such preliminary investigation referenced in subparagraph (A) of this
118 paragraph, until such time as the commission determines that there are reasonable
119 grounds to believe that a violation has occurred, it shall not be necessary to give the

120 notice by summons nor to conduct a hearing in accordance with Chapter 13 of Title 50,
121 the 'Georgia Administrative Procedure Act';"
122 "(23) To award attorneys' fees to the party complained against if the commission deems
123 the complaint to be frivolous, legally or factually, ~~or if the complaining party fails,~~
124 ~~without good cause, to appear at the preliminary hearing on the complaint; and"~~

125 **SECTION 6.**

126 Said chapter is further amended by revising Code Section 21-5-7, relating to initiation of
127 complaints, as follows:

128 "21-5-7.

129 The commission shall not initiate any investigation or inquiry into any matter under its
130 jurisdiction based upon the complaint of any person, including a staff attorney employed
131 by the commission, unless that person or staff attorney shall produce the same in writing
132 and verify the same under oath to the best information, knowledge, and belief of such
133 person, the falsification of which shall be punishable as false swearing under Code Section
134 16-10-71. The person against whom any complaint is made shall be furnished by hand
135 delivery or statutory overnight delivery or mailed by certified mail, return receipt
136 requested, a copy of the complaint by the commission within two business days of the
137 commission's receipt of such complaint and prior to any other public dissemination of such
138 complaint. ~~Nothing in this Code section, however, shall be construed to limit or encumber~~
139 ~~the right of the commission to initiate on probable cause an investigation on its own~~
140 ~~cognizance as it deems necessary to fulfill its obligations under this chapter."~~

141 **SECTION 7.**

142 Said chapter is further amended by revising Code Section 21-5-13, relating to limitation of
143 actions, as follows:

144 "21-5-13.

145 Any action alleging a violation of this chapter shall be commenced within three years after
146 ~~the date of filing of the first report containing the alleged violation on which the violation,~~
147 ~~wrongful act, or omission occurred~~; provided, however, that any action alleging a violation
148 of this chapter shall be commenced within five years after the date ~~of filing of the first~~
149 ~~report containing the alleged violation on which the violation, wrongful act, or omission~~
150 ~~occurred when~~ involving any person elected to serve for a term of four or more years or
151 any candidate for an office with a term of four or more years. For purposes of this Code
152 section, an action shall be deemed to have commenced against a person only when either:

153 (1) A complaint has been accepted or filed by the commission in compliance with Code
154 Section 21-5-7; or

155 (2) The commission or Attorney General serves on such person a notice of summons or
156 hearing, in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
157 Procedure Act,' that alleges that such person has violated this chapter."

158 **SECTION 8.**

159 Said chapter is further amended by revising Code Section 21-5-32, relating to accounts to be
160 kept by candidate or campaign committee treasurer, as follows:

161 "21-5-32.

162 (a) The candidate or treasurer of each campaign committee shall keep detailed accounts,
163 current within not more than five business days after the date of receiving a contribution
164 or making an expenditure, of all contributions received and all expenditures made by or on
165 behalf of the candidate or committee. The candidate or treasurer shall also keep detailed
166 accounts of all deposits and of all withdrawals made to the separate campaign depository
167 account and of all interest earned on any such deposits.

168 (b) Accounts kept by the candidate or treasurer of a campaign committee pursuant to this
169 Code section may be inspected under reasonable circumstances before, during, or after the

170 election to which the accounts refer by any authorized representative of the commission.
 171 The right of inspection may be enforced by appropriate writ issued by any court of
 172 competent jurisdiction.

173 (c) ~~Records of such accounts; kept by the candidate or campaign committee shall be~~
 174 ~~preserved for three years from the termination date of the campaign for elective office~~
 175 ~~conducted by the candidate or of the campaign committee for any candidate or for three~~
 176 ~~years from the election to bring about the approval or rejection by the voters of any~~
 177 ~~proposed constitutional amendment, referendum, or local issue or of any recall vote~~

178 (1) For a person campaigning for an elective office with a term of less than four years,
 179 shall be preserved for three years from the date of the contribution, expenditure, gift,
 180 investment, or loan;

181 (2) For a person campaigning for an elective office with a term of four or more years,
 182 shall be preserved for five years from the date of the contribution, expenditure, gift,
 183 investment, or loan; and

184 (3) For any proposed constitutional amendment, referendum, or local issue or any recall
 185 vote, shall be preserved for three years from the date of contribution, expenditure, gift,
 186 investment, or loan.

187 **SECTION 9.**

188 Said chapter is further amended by revising subsections (b) and (c) of Code Section 21-5-33,
 189 relating to disposition of contributions, as follows:

190 "(b)(1) All contributions received by a candidate or such candidate's campaign committee
 191 or a public officer holding elective office in excess of those necessary to defray expenses
 192 pursuant to subsection (a) of this Code section and as determined by such candidate or
 193 such public officer may only be used as follows:

194 (A) As ~~contributions~~ donations to any charitable organization described in 26 U.S.C.
 195 170(c) as said federal statute exists on March 1, 1986, and which additionally shall

196 include educational, eleemosynary, and nonprofit organizations subject to the
197 prohibitions contained in paragraph (2) of this subsection;

198 (B) Except as otherwise provided in subparagraph (D) of this paragraph, for transferral
199 without limitation to any national, state, or local committee of any political party or to
200 any candidate;

201 (C) For transferral without limitation to persons making such contributions, not to
202 exceed the total amount cumulatively contributed by each such transferee;

203 (D) For use in future campaigns for only that elective office for which those
204 contributions were received. With respect to contributions held on January 1, 1992, or
205 received thereafter, in the event the candidate, campaign committee, or public officer
206 holding elective office has not designated, prior to receiving contributions to which this
207 Code section is applicable, the office for which campaign contributions are received
208 thereby, those contributions shall be deemed to have been received for the elective
209 office which the candidate held at the time the contributions were received or, if the
210 candidate did not then hold elective office, those contributions shall be deemed to have
211 been received for that elective office for which that person was a candidate most
212 recently following the receipt of such contributions; or

213 (E) For repayment of any prior campaign obligations incurred as a candidate.

214 (2) Nothing in this Code section shall permit or authorize a candidate to utilize campaign
215 funds for the purpose of making loans or investments directly to the candidate, the
216 candidate's business, candidate's trust, candidate's nonprofit organization or a member of
217 the family of the candidate.

218 (3) Any candidate or public officer holding elective office may provide in the will of
219 such candidate or such public officer that the contributions shall be spent in any of the
220 authorized manners upon the death of such candidate or such public officer; and, in the
221 absence of any such direction in the probated will of such candidate or such public
222 officer, the contributions shall be paid to the treasury of the state party with which such

223 candidate or such public officer was affiliated in such candidate's or such public officer's
224 last election or elective office after the payment of any expenses pursuant to
225 subsection (a) of this Code section. Notwithstanding any other provisions of this
226 paragraph, the personal representative or executor of the estate shall be allowed to use or
227 pay out funds in the campaign account in any manner authorized in subparagraphs (A)
228 through (E) of paragraph (1) of this subsection.

229 (c) Contributions and interest thereon, if any, shall not constitute personal assets of such
230 candidate or such public officer. The commission shall adopt rules and regulations for the
231 implementation of this subsection."

232 **SECTION 10.**

233 Said chapter is further amended by revising paragraph (1) of subsection (f) of Code Section
234 21-5-34, relating to disclosure reports, as follows:

235 "(f)(1) Any independent committee which accepts contributions or makes expenditures
236 ~~for the purpose of affecting~~ electioneering communications to affect the outcome of an
237 election or advocates the election or defeat of any candidate shall register with the
238 commission prior to accepting contributions or making expenditures and shall file
239 disclosure reports as follows:

- 240 (A) On the first day of each of the two calendar months preceding any such election;
241 (B) Two weeks prior to the date of such election; and
242 (C) Within the two-week period prior to the date of such election the independent
243 committee shall report within two business days any contributions or expenditure of
244 more than \$1,000.00.

245 The independent committee shall file a final report prior to December 31 of the election
246 year and shall file supplemental reports on June 30 and December 31 of each year that
247 such independent committee continues to accept contributions or make expenditures."

248 **SECTION 11.**

249 Said chapter is further amended by revising subsection (k) of Code Section 21-5-41, relating
250 to maximum allowable contributions, as follows:

251 "~~(k) At the end of the each gubernatorial election cycle applicable to each public office as~~
252 ~~to which campaign contributions are limited by this Code section and every four years for~~
253 ~~all other elections to which this Code section is applicable,~~ the contribution limitations in
254 this Code section shall be raised or lowered in increments of \$100.00 by regulation order
255 of the commission pursuant to a ~~determination~~ consideration by the commission of
256 inflation or deflation during such cycle or four-year period, as determined by the Consumer
257 Price Index published by the Bureau of Labor Statistics of the United States Department
258 of Labor, and such limitations shall apply until next revised by the commission. The
259 commission shall adopt rules and regulations for the implementation of this subsection."

260 **SECTION 12.**

261 Said chapter is further amended by revising subsections (c) and (d) of Code Section 21-5-43,
262 relating to accounting for and expenditure of campaign contributions, and by adding a new
263 subsection to read as follows:

264 "(c) Contributions remaining unexpended after the date of ~~the~~ an election in which the
265 candidate does appear on the ballot may be expended for any future election in the same
266 election cycle without regard to the limitations of Code Section 21-5-41. If there are no
267 further elections in the election cycle or if the candidate or the candidate of the campaign
268 committee is not on the ballot of a further election in the election cycle, ~~such~~ any remaining
269 contributions may be used only as provided in Code Section 21-5-33.

270 (d) Contributions accepted and separately accounted for in an election in which the
271 candidate does not occur or for which the candidate does not qualify appear on the ballot,
272 if unexpended, shall be returned to the contributors thereof pro rata without interest. Any

273 portion thereof which cannot be returned to the original contributor thereof shall be
274 expended only as provided in Code Section 21-5-33.

275 (e) For purposes of separate accounting, a candidate shall be deemed to have advanced to
276 the next election in the election cycle upon the official certification of the election result
277 by the Secretary of State, or upon the concession of the candidate's election opponents, or
278 upon receiving a preliminary consolidated election return of 50 percent plus one and a vote
279 margin of greater than 2 percent for advancement to a general election, or upon receiving
280 a preliminary consolidated election return of 50 percent or less for a runoff election and
281 placing in one of the two spots that will advance to the runoff election, whichever event
282 shall first occur.

283 (f) The commission shall adopt such rules and regulations as are necessary to carry out the
284 purposes of this Code section in accordance with Chapter 13 of Title 50, the 'Georgia
285 Administrative Procedure Act.'

286 **SECTION 13.**

287 Said chapter is further amended by revising subsections (a) and (g) of Code Section 21-5-50,
288 relating to filing by public officers, filing by candidates for public office, filing by elected
289 officials and members of the General Assembly, electronic filing, and transfer of filings from
290 the Secretary of State to the commission, as follows:

291 "(a)(1) Except as modified in subsection (c) of this Code section with respect to
292 candidates for state-wide elected public office, each public officer, as defined in
293 subparagraphs (A) through (D) of paragraph (22) of Code Section 21-5-3, shall file with
294 the commission not before the first day of January nor later than July 1 of each year in
295 which such public officer holds office other than an election year a financial disclosure
296 statement for the preceding calendar year; and each person who qualifies as a candidate
297 for election as a public officer, as defined in subparagraphs (A) through (D) of
298 paragraph (22) of Code Section 21-5-3, shall file with the commission, no later than the

299 fifteenth day following the date of qualifying as a candidate, a financial disclosure
300 statement for the preceding calendar year.

301 (2) Except as set forth in paragraph (3) of this subsection, a public officer, as defined in
302 subparagraph (E) of paragraph (22) of Code Section 21-5-3, shall not be required to file
303 a financial disclosure statement pursuant to this Code section. Each such public officer
304 shall, however, be deemed to be a public official for purposes of Code Section 45-10-26
305 and shall be subject to the disclosure requirements set forth in Code Section 45-10-26.
306 In addition, each such public officer shall file with the commission, prior to January 31
307 each year, an affidavit confirming that such public officer took no official action in the
308 previous calendar year that had a material effect on such public officer's private financial
309 or business interests; provided, however, that if a public officer as defined in
310 subparagraph (E) of paragraph (22) of Code Section 21-5-3 has previously filed a
311 financial disclosure statement with the commission pursuant to paragraph (2) of
312 subsection (a) of Code Section 21-5-50, and said financial disclosure statement covers
313 the same calendar year as would be covered by the affidavit required by this Code
314 section, the public officer shall be exempted from filing an affidavit.

315 (3) A public officer, as defined in subparagraph (E) of paragraph (22) of Code
316 Section 21-5-3, who serves as a member of the commission shall be subject to the
317 requirements for filing financial disclosure statements set forth in paragraph (1) of this
318 subsection. In addition, each such public officer shall file with the commission, together
319 with the financial disclosure statement, an affidavit confirming that such public officer
320 took no official action in the previous calendar year that had a material effect on such
321 public officer's private financial or business interests.

322 (3.1) A public officer and candidates for election as a public officer, as defined in
323 subparagraphs (F) and (G) of paragraph (22) of Code Section 21-5-3, shall make filings
324 of the same kind and in the same manner as provided in paragraph (1) of this subsection
325 for other public officers and candidates for election as a public officer except that filings

326 under this paragraph shall be made with the election superintendent of the county in the
327 case of public officers and candidates for election as a public officer as defined in said
328 subparagraph (F) and shall be made with the municipal clerk in the municipality of
329 election or, if there is no clerk, with the chief executive officer of the municipality in the
330 case of public officers as defined in said subparagraph (G). The election superintendent,
331 municipal clerk, or chief executive officer, as applicable, shall transmit, electronically by
332 eFiling or eFax, a copy of each such report to the commission not later than 30 days after
333 the close of the reporting period. No fine, fee, or sanction, including but not limited to
334 identifying a public officer or candidate for election as a public officer as having filed late
335 or failed to file, shall be imposed by the commission on the public officer or candidate
336 for election as a public officer for the failure of the election superintendent, municipal
337 clerk, or chief executive officer to timely transmit a copy of such report.

338 (4) Each member of the State Transportation Board shall file a financial disclosure
339 statement for the preceding calendar year no later than the sixtieth day following such
340 member's election to the State Transportation Board. Thereafter, each board member
341 shall file by January 31 of each year a financial disclosure statement for the preceding
342 year. In addition, each board member shall file with the commission, prior to January 31
343 of each year, an affidavit confirming that such board member took no official action in
344 the previous calendar year that had a material effect on such board member's private
345 financial or business interests.

346 (5) The commission or the applicable official under paragraph (3.1) of this subsection
347 shall review each financial disclosure statement to determine that such statement is in
348 compliance with the requirements of this chapter.

349 (6) A public officer shall not, however, be required to file such a financial disclosure
350 statement for the preceding calendar year in an election year if such public officer does
351 not qualify for nomination for election to succeed himself or herself or for election to any
352 other public office subject to this chapter. For purposes of this paragraph, a public officer

353 shall not be deemed to hold office in a year in which the public officer holds office for
354 fewer than 15 days."

355 "(g) Notwithstanding any other provision of this chapter to the contrary, soil and water
356 conservation district supervisors elected pursuant to Article 2 of Chapter 6 of Title 2 shall
357 not be required to file personal financial disclosure statements under this Code section.
358 ~~Reserved.~~"

359 **SECTION 14.**

360 Said chapter is further amended by revising subsection (c) of Code Section 21-5-71, relating
361 to registration required, application for registration, supplemental registration, expiration,
362 docket, fees, identification cards, public rosters, and exemptions, as follows:

363 "(c) The lobbyist shall, prior to any substantial or material change or addition in their
364 registration, file a supplemental registration indicating such substantial or material change
365 or addition to the registration prior to its expiration. Previously filed information may be
366 incorporated by reference. Substantial or material changes or additions shall include, but
367 are not limited to, the pertinent information concerning changes or additions to client and
368 employment information required by paragraphs (2), (3), (4), (6), and (7) and conviction
369 status required by paragraph (8) of subsection (b) of this Code section."

370 **SECTION 15.**

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

373 **SECTION 16.**

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