

House Bill 858

By: Representatives Geisinger of the 48th, Lindsey of the 54th, Setzler of the 35th, Coan of the 101st, Powell of the 29th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to
2 elections and primaries generally, so as to provide for the duplicating of certain damaged
3 optical scan ballots; to provide for certain recounts; to provide for additional grounds for
4 challenging an election; to provide for a random hand count of optical scan ballots at the
5 precinct; to provide procedures for such count; to provide for related matters; to provide an
6 effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
10 primaries generally, is amended by revising Code Section 21-2-483, relating to counting of
11 optical scan ballots, as follows:

12 "21-2-483.

13 (a) In primaries and elections in which optical scanners are used, the ballots shall be
14 counted at the precinct or tabulating center under the direction of the superintendent. All
15 persons who perform any duties at the tabulating center shall be deputized by the
16 superintendent, and only persons so deputized shall touch any ballot, container, paper, or
17 machine utilized in the conduct of the count or be permitted to be inside the area designated
18 for officers deputized to conduct the count.

19 (b) All proceedings at the tabulating center and precincts shall be open to the view of the
20 public, but no person except one employed and designated for the purpose by the
21 superintendent or the superintendent's authorized deputy shall touch any ballot or ballot
22 container.

23 (c) At the tabulating center, the seal on each container of ballots shall be inspected, and
24 it shall be certified that the seal has not been broken before the container is opened. The
25 ballots and other contents of the container shall then be removed, and the ballots shall be

1 prepared for processing by the tabulating machines. The ballots of each polling place shall
2 be plainly identified and cannot be commingled with the ballots of other polling places.

3 (d) Upon completion of tabulation of the votes, the superintendent shall cause to be
4 completed and signed a ballot recap form, in sufficient counterparts, showing:

- 5 (1) The number of valid ballots, including any that are damaged;
- 6 (2) The number of spoiled and invalid ballots; and
- 7 (3) The number of unused ballots.

8 The superintendent shall cause to be placed one copy of the recap form and the defective,
9 spoiled, and invalid ballots, each enclosed in an envelope, in the ballot supply container.

10 (e) For any election for which there is a qualified write-in candidate, the feature on
11 precinct count and central count tabulators allowing separation of write-in votes shall be
12 utilized. If any vote cast on the write-in ballot in combination with the vote cast for the
13 same office on the ballot exceeds the allowed number for the office, the vote cast for that
14 office only shall not be counted. In the discretion of the superintendent, either a duplicate
15 ballot shall be made on which any invalid vote shall be omitted or the write-in ballot and
16 the ballot shall be counted in such manner as may be prescribed by State Election Board
17 rules, omitting the invalid vote.

18 (f) If it appears that a ballot is so torn, bent, or otherwise defective that it cannot be
19 processed by the tabulating machine, the superintendent or the poll manager, as
20 appropriate, in his or her discretion, may order the proper election official at the tabulating
21 center or precinct to prepare a true duplicate copy for processing with the ballots of the
22 same polling place, which shall be verified in the presence of a witness. The damaged
23 ballot shall be given a unique serial number which shall be written on the ballot. All
24 duplicate ballots shall be clearly labeled by the word 'duplicate,' shall bear the designation
25 of the polling place, and shall be given the same serial number as the defective ballot. The
26 defective ballot shall be retained.

27 (g)(1) The precinct tabulator shall be programmed to return to the voter at the time that
28 the voter inserts the ballot any ballot on which an overvote is indicated, along with any
29 ballot that cannot be processed by the tabulator for reevaluation or correction or spoiling
30 of the ballot, and a new ballot shall be issued if the voter desires to vote another ballot in
31 order to correct mistakes, overvotes, or other problems.

32 (2)(A) The central tabulator shall be programmed to reject any ballot, including
33 absentee ballots, on which an overvote is detected and any ballot so rejected shall be
34 manually reviewed by the vote review panel described in this Code section to determine
35 the voter's intent as described in subsection (c) of Code Section 21-2-438.

36 (B) In a partisan election, the vote review panel shall be composed of the election
37 superintendent or designee thereof and one person appointed by the county executive

1 committee of each political party and body having candidates whose names appear on
 2 the ballot for such election, provided that, if there is no organized county executive
 3 committee for a political party or body, the person shall be appointed by the state
 4 executive committee of the political party or body. In a nonpartisan election, the panel
 5 shall be composed of the election superintendent or designee thereof and two electors
 6 of the county, in the case of a county election, or the municipality, in the case of a
 7 municipal election, appointed by the chief judge of the superior court of the county in
 8 which the election is held or, in the case of a municipality which is located in more than
 9 one county, of the county in which the city hall of the municipality is located. The
 10 panel shall manually review all ballots rejected by the tabulator under subparagraph (A)
 11 of this paragraph and shall determine by majority vote whether the elector's intent can
 12 be determined as described in subsection (c) of Code Section 21-2-438 and, if so, said
 13 vote shall be counted as the elector intended. In the event of a tie vote by the vote
 14 review panel, the vote of the election superintendent or designee thereof shall control.

15 (h) The official returns of the votes cast on ballots at each polling place shall be printed
 16 by the tabulating machine. The returns thus prepared shall be certified and promptly
 17 posted. The ballots, spoiled, defective, and invalid ballots, and returns shall be filed and
 18 retained as provided by law.

19 (i)(1)(A) In primaries and elections in which precinct based optical scan tabulating
 20 equipment is used, a random sample of the optical scan ballots shall be counted at each
 21 precinct under the direction of the poll manager.

22 (B) After processing all optical scan ballots and printing the results tapes from the
 23 tabulating machines, the poll manager shall randomly select one contested race from
 24 the ballot for a hand count. Such selection shall be made by listing all of the contested
 25 races on the ballot individually on uniform sized slips of paper, uniformly folding such
 26 slips of paper such that the name of the race cannot be seen, placing the slips of paper
 27 into a container and mixing the slips thoroughly, and then drawing from the container
 28 one slip of paper. Upon drawing the slip of paper, the manager shall then announce the
 29 race that will be hand counted. The slips of paper shall be available for examination
 30 by any member of the public who desires to do so.

31 (C) After randomly selecting the race for a hand count, the manager or a poll officer
 32 under the direction of the manager shall unlock the ballot boxes containing the optical
 33 scan ballots. The poll manager shall then proceed to count the votes cast in the
 34 randomly selected race as shown on the ballots. Such count shall be performed in the
 35 same manner as for paper ballots as provided in Code Section 21-2-437 for the
 36 randomly selected race. Upon the conclusion of the count, the manager or a poll officer
 37 under the direction of the manager shall record the results of the hand count on the

1 return sheet and shall compare the results for the race to the results shown on the tapes
2 from the tabulating machine for such race. In the event of a discrepancy in the count
3 between the totals for such race, the manager or a poll officer under the direction of the
4 manager shall post the results of the hand count and one set of return tapes from the
5 tabulating machine, noting any discrepancies found, at the polling place for the
6 information of the public.

7 (D) After performing the hand count of the race or races, the manager shall cause the
8 optical scan ballots to be securely sealed in the ballot box and shall seal the return
9 sheets, tally sheets, one set of return tapes, and other completed forms in an envelope
10 for transfer to the election superintendent.

11 (2)(A) In primaries and elections in which central count optical scan tabulating
12 equipment is used, a random sample of the optical scan ballots shall be counted at the
13 tabulating center at each precinct under the direction of the superintendent.

14 (B) After processing all optical scan ballots and printing the results reports from the
15 tabulating machines, the superintendent shall randomly select one contested race from
16 the ballot for a hand count. Such selection shall be made by listing all of the contested
17 races on the ballot individually on uniform sized slips of paper, uniformly folding such
18 slips of paper such that the name of the race cannot be seen, placing the slips of paper
19 into a container and mixing the slips thoroughly, and then drawing from the container
20 one slip of paper. Upon drawing the slip of paper, the superintendent shall then
21 announce the race that will be hand counted. The superintendent shall then randomly
22 select a number of precincts constituting at least 10 percent of the precincts in the
23 county for the hand count. Such selection shall be made by listing all of the precincts
24 individually on uniform sized slips of paper, uniformly folding such slips of paper such
25 that the name of the precinct cannot be seen, placing the slips of paper into a container
26 and mixing the slips thoroughly, and then drawing from the container one slip of paper
27 at a time until the appropriate number of precincts has been selected. Upon drawing the
28 slip of paper, the superintendent shall then announce the race that will be hand counted
29 The slips of paper shall be available for examination by any member of the public who
30 desires to do so.

31 (C) After randomly selecting the race for a hand count, the superintendent shall cause
32 the selected race on each ballot cast in the selected precincts to be hand counted as
33 provided in this paragraph. Such count shall be performed in the same manner as for
34 paper ballots as provided in Code Section 21-2-437 for the randomly selected race.
35 Upon the conclusion of the count, the superintendent shall record the results of the hand
36 count on the return sheet and shall compare the results for the race to the results shown
37 on the reports from the tabulating machine for such race. In the event of a discrepancy

1 in the count between the totals for such race, the superintendent shall post the results
 2 of the hand count and one set of return tapes from the tabulating machine, noting any
 3 discrepancies found, at the tabulating center or the office of the superintendent for the
 4 information of the public.

5 (j) In the event of a discrepancy between the hand count totals from the precincts and the
 6 totals from the tabulating machines, the superintendent shall use the hand count totals as
 7 the official results. The superintendent shall immediately make the public aware of any
 8 such discrepancy by posting notice of such discrepancy at his or her office for the
 9 information of the public and on the official website of the county or municipality on which
 10 the county or municipality posts election returns if the county or municipality has such a
 11 website. The superintendent shall note on the official returns for the primary, election, or
 12 runoff, as appropriate, the vote totals that are based, in whole or in part, on hand counts as
 13 a result of a discrepancy between the hand count and the machine totals."

14 SECTION 2.

15 Said chapter is further amended by adding new subsections (e) and (f) to Code Section
 16 21-2-495, relating to procedure for recount or recanvass of votes, to read as follows:

17 "(e) Any other provision of this Code section to the contrary notwithstanding, a candidate
 18 may petition the Secretary of State, in the case of a candidate in a race which is voted upon
 19 by electors in more than one county, or the election superintendent, in the case of races
 20 voted upon by electors in one county or a portion of one county, for a hand recount of the
 21 optical scan ballots in a county when it appears that there is a discrepancy in a precinct in
 22 such county between the hand count of a randomly selected race pursuant to subsection (i)
 23 of Code Section 21-2-483 and the results for the same race as shown on reports from the
 24 tabulating machines. Upon receiving a proper petition, the Secretary of State or the
 25 election superintendent, as appropriate, shall order a hand count to be conducted of all of
 26 the optical scan ballots for such race in such county. Such hand count shall be held at any
 27 time prior to the certification of the consolidated returns by the Secretary of State. The
 28 hand count shall be conducted by the appropriate superintendent or superintendents in the
 29 manner and pursuant to the procedures otherwise provided in this Code section for
 30 counting paper ballots. The petition pursuant to this Code section shall be in writing and
 31 signed by the person or persons requesting the hand count. The petition shall set forth the
 32 discrepancies and any evidence in support of the petitioner's request for a hand count and
 33 shall be verified. The result of such hand count shall then become the official result of
 34 such primary, election, or runoff. The cost of such recounts shall not be charged to any
 35 candidate, political party or body, or elector.

(f) Any other provision of this Code section to the contrary notwithstanding, a candidate or ten or more electors who cast ballots in the race in which the candidate ran may petition the Secretary of State, in the case of a candidate in a race that is voted upon by electors in more than one county, or the election superintendent, in the case of a candidate in a race that is voted upon by the electors of one county or a portion of one county, for a hand recount of the optical scan ballots in all precincts when it appears that there are similar discrepancies in more than one precinct between the hand count of a randomly selected race pursuant to subsection (i) of Code Section 21-2-483 and the results for the same race as shown on the reports from the tabulating machines. Upon receiving a proper petition, the Secretary of State or the election superintendent, as appropriate, shall order a hand count to be conducted of all of the optical scan ballots for such race in all precincts. Such hand count shall be held at any time prior to the certification of the consolidated returns by the Secretary of State or the election superintendent, as appropriate. The hand count shall be conducted by the appropriate superintendent or superintendents in the manner and pursuant to the procedures otherwise provided in this Code section for counting paper ballots. The petition pursuant to this Code section shall be in writing and signed by the person or persons requesting the hand count. The petition shall set forth the discrepancies and any evidence in support of the petitioner's request for a hand count and shall be verified. The result of such hand count shall then become the official result of such primary, election, or runoff."

SECTION 3.

Said chapter is further amended by revising Code Section 21-2-522, relating to grounds for contesting an election, as follows:

"21-2-522.

A result of a primary or election may be contested on one or more of the following grounds:

- (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;
- (2) When the defendant is ineligible for the nomination or office in dispute;
- (3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
- (4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result;
- (5) When there is an unexplained discrepancy between the results of a hand count of a race pursuant to subsection (i) of Code Section 21-2-483 and the results of such race as shown by the tabulating machine tapes or reports in a precinct in which the person filing

1 the contest was a candidate and such discrepancy places the results of such race in doubt;
2 or
3 ~~(5)~~(6) For any other cause which shows that another was the person legally nominated,
4 elected, or eligible to compete in a run-off primary or election.”

5 **SECTION 4.**

6 This Act shall become effective on January 1, 2008.

7 **SECTION 5.**

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