

House Bill 859

By: Representatives Geisinger of the 48th, Lindsey of the 54th, Coan of the 101st, Powell of the 29th, Meadows of the 5th, 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 primaries and elections generally, so as to provide a definition; to require all electronic
3 recording voting systems to produce an elector verified, permanent paper record of the votes
4 recorded on such systems for each elector; to provide that electors shall have an opportunity
5 to verify such record after voting; to provide for reexamination and recertification of direct
6 recording electronic voting systems under certain circumstances; to authorize the use of
7 certain printers and printer interfaces; to authorize the use of alternative means of voting
8 under certain circumstances; to provide for certain recounts; to provide for additional
9 grounds for challenging an election; to provide that such paper records be the official record
10 of the votes in an election for use in recounts and election challenge proceedings; to provide
11 for a random hand count of the permanent paper records at the precinct; to provide
12 procedures for such count; to provide for related matters; to provide an effective date; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and
17 elections generally, is amended by adding a new paragraph (21.1) to Code Section 21-2-2,
18 relating to definitions, to read as follows:

19 "(21.1) 'Permanent paper record' means the paper copy record of an elector's vote that
20 is printed by a direct recording electronic unit and is deposited or caused to be deposited
21 by the elector in a ballot box or similar container. Such permanent paper records shall
22 be the official records of the votes cast in a primary, election, or runoff in the case of a
23 discrepancy between the votes shown on such paper records and the votes shown on the
24 DRE units and for the purposes of recounts and election contests under this chapter."

1 manner as a spoiled ballot. After pressing the appropriate button on the unit or location on
 2 the screen to cast the ballot, the elector's ~~vote~~ ballot shall be final and shall not be
 3 subsequently altered. The permanent paper records shall be secured in locked ballot boxes
 4 or similar secure containers at all times in a manner similar to paper ballots under this
 5 chapter and such ballot boxes or containers shall not be opened nor shall such permanent
 6 paper records be counted until the close of the polls. In the event that the DRE unit cannot
 7 produce a correct permanent paper record of the elector's votes, such unit shall be shut
 8 down and sealed and the superintendent and the Secretary of State shall be immediately
 9 notified of such problem."

10 SECTION 5.

11 Said chapter is further amended by revising Code Section 21-2-379.11, relating to procedure
 12 for tabulation of votes, as follows:

13 "21-2-379.11.

14 (a)(1) In primaries and elections in which direct recording electronic (DRE) voting
 15 equipment is used, ~~the ballots~~ a random sample of the permanent paper records created
 16 by the direct recording electronic units shall be counted at ~~the~~ each precinct ~~or tabulating~~
 17 ~~center~~ under the direction of the superintendent poll manager.

18 (2) All persons who perform any duties at ~~the~~ a precinct or tabulating center shall be
 19 deputized by the superintendent and only persons so deputized shall touch any ballot,
 20 container, paper, or machine utilized in the conduct of the count or be permitted to be in
 21 the immediate area designated for officers deputized to conduct the count.

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

26 (c) After the polls have closed and all voting in the precinct has ceased, the poll manager
 27 shall shut down the DRE units and extract the election results from each unit as follows:

28 (1) The manager shall obtain ~~the~~ at least three results ~~tape tapes~~
 29 verify that the number of ballots cast as recorded on the ~~tape tapes~~
 30 count number as displayed on the DRE unit; and

31 ~~(2) If a system is established by the Secretary of State, the poll manager shall first~~
 32 ~~transmit the election results extracted from each DRE unit in each precinct via modem~~
 33 ~~to the central tabulating center of the county; and~~

34 ~~(3)~~ The manager shall then extract the memory card from each DRE unit.

1 (d) Upon completion of shutting down each DRE unit and extracting the election results,
 2 the manager shall cause to be completed and signed a ballot recap form, in sufficient
 3 counterparts, showing:

- 4 (1) The number of valid ballots;
- 5 (2) The number of spoiled and invalid ballots;
- 6 (3) The number of provisional ballots; and
- 7 (4) The number of unused provisional ballots and any other unused ballots.

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

10 (e) The manager shall collect and retain the zero tape and one of the results tape tapes for
 11 each DRE unit and place such tapes with the memory card for each unit and enclose all
 12 such items for all of the DRE units used in the precinct in one envelope which shall be
 13 sealed and initialed by the manager so that it cannot be opened without breaking the seal.

14 (f)(1) After collecting the tapes from the DRE units, the manager shall randomly select
 15 one contested race from the ballot for a hand count. Such selection shall be made by
 16 listing all of the contested races on the ballot individually on uniform sized slips of paper,
 17 uniformly folding such slips of paper such that the name of the race cannot be seen,
 18 placing the slips of paper into a container and mixing the slips thoroughly, and then
 19 drawing from the container one slip of paper. Upon drawing the slip of paper, the
 20 manager shall then announce the race that will be hand counted. The slips of paper shall
 21 be available for examination by any member of the public who desires to do so.

22 (2) After randomly selecting the race for a hand count, the manager or a poll officer
 23 under the direction of the manager shall unlock the ballot boxes containing the permanent
 24 paper records and shall count the number of records in such ballot boxes which number
 25 shall then be entered onto a recap sheet and compared to the number of persons shown
 26 as having voted on the electors list, the numbered list of voters, and the voters'
 27 certificates. Any discrepancy shall be duly noted.

28 (3) After completing the count of the number of permanent paper records contained in
 29 the ballot boxes, the manager shall then proceed to count the votes cast in the randomly
 30 selected race as shown on the records. Such count shall be performed in the same manner
 31 as for paper ballots as provided in Code Section 21-2-437 for the randomly selected race.
 32 Upon the conclusion of the count, the manager or a poll officer under the direction of the
 33 manager shall record the results of the hand count on the return sheet and shall compare
 34 the results for the race to the results shown on the tapes from the DRE units for such race.
 35 In the event of a discrepancy in the count between the totals for such race, the manager
 36 or a poll officer under the direction of the manager shall post the results of the hand count

1 and one set of return tapes from the DRE units, noting any discrepancies found, at the
 2 polling place for the information of the public.

3 (4) After performing the hand count of the race or races, the manager shall cause the
 4 permanent paper records to be securely sealed in the ballot box and shall seal the return
 5 sheets, tally sheets, one set of return tapes, and other completed forms in an envelope for
 6 transfer to the election superintendent.

7 (g) The manager and one poll worker shall then deliver the ~~envelope~~ ballot boxes and
 8 envelopes to the tabulating center for the county or municipality or to such other place
 9 designated by the superintendent and shall receive a receipt therefor. The copies of the
 10 recap forms, unused ballots, records, and other materials shall be returned to the designated
 11 location and retained as provided by law.

12 (g)(h) Upon receipt of the sealed envelope containing the zero tapes, results tapes, and
 13 memory cards, the election superintendent shall verify the signatures on the envelope.
 14 Once verified, the superintendent shall break the seal of the envelope and remove its
 15 contents. The superintendent shall then download the results stored on the memory card
 16 from each DRE unit into the election management system located at the central tabulation
 17 point of the county in order to obtain election results for certification.

18 (i) In the event of a discrepancy between the hand count totals from the precincts and the
 19 totals from the DRE memory cards, the superintendent shall use the hand count totals as
 20 the official results. The superintendent shall immediately make the public aware of any
 21 such discrepancy by posting notice of such discrepancy at his or her office for the
 22 information of the public and on the official website of the county or municipality on which
 23 the county or municipality posts election returns if the county or municipality has such a
 24 website. The superintendent shall note on the official returns for the primary, election, or
 25 runoff, as appropriate, the vote totals that are based, in whole or in part, on hand counts as
 26 a result of a discrepancy between the hand count and the machine totals."

27 **SECTION 6.**

28 Said chapter is further amended by adding new Code Sections 21-2-379.12 and 21-2-379.13
 29 to read as follows:

30 "21-2-379.12.

31 Until the federal Elections Assistance Commission established pursuant to the federal Help
 32 America Vote Act of 2002 adopts standards for printers attached or connected to direct
 33 recording electronic voting equipment and used for the purpose of providing elector
 34 verified, permanent paper records with a manual audit capacity for the votes cast by each
 35 individual voter on such equipment and until printers designed or authorized for use with
 36 the direct recording electronic voting equipment in use in this state have been certified

1 under such standards, no provision of this chapter nor any rule or regulation of the
2 Secretary of State or the State Election Board shall prohibit the use of direct recording
3 electronic voting equipment that utilizes such printers for such purpose on the basis that
4 such printers or printer interfaces have not received certification or that such direct
5 recording electronic voting equipment has not been certified for use with such printers or
6 printer interfaces in primaries and elections from an independent testing authority that tests
7 and certifies voting equipment or other certifying body or entity.

8 21-2-379.13.

9 If 20 percent or more of the direct recording electronic units at a precinct become
10 inoperative for whatever reason during a primary, election, or runoff, the superintendent
11 shall provide alternative means of voting at such precinct. Provisional ballots may be used
12 for such purpose, but shall be deemed to be regular ballots for which the provisional ballot
13 procedures shall not be applicable unless the elector casting the ballot qualifies as a
14 provisional voter under Code Section 21-2-418, in which case the ballot shall continue to
15 be handled as a provisional ballot."

16 **SECTION 7.**

17 Said chapter is further amended by adding new subsections (e) and (f) to Code Section
18 21-2-495, relating to procedure for recount or recanvass of votes, to read as follows:

19 "(e) Any other provision of this Code section to the contrary notwithstanding, a candidate
20 may petition the Secretary of State, in the case of a candidate in a race which is voted upon
21 by electors in more than one county, or the election superintendent, in the case of races
22 voted upon by electors in one county or a portion of one county, for a hand recount of the
23 permanent paper records in a county when it appears that there is a discrepancy in a
24 precinct in such county between the hand count of a randomly selected race pursuant to
25 subsection (f) of Code Section 21-2-379.11 and the results for the same race as shown on
26 the DRE units. Upon receiving a proper petition, the Secretary of State or the election
27 superintendent, as appropriate, shall order a hand count to be conducted of all of the
28 permanent paper records for such race in such county. Such hand count shall be held at
29 any time prior to the certification of the consolidated returns by the Secretary of State. The
30 hand count shall be conducted by the appropriate superintendent or superintendents in the
31 manner and pursuant to the procedures otherwise provided in this Code section for
32 counting paper ballots. The petition pursuant to this Code section shall be in writing and
33 signed by the person or persons requesting the hand count. The petition shall set forth the
34 discrepancies and any evidence in support of the petitioner's request for a hand count and
35 shall be verified. The result of such hand count shall then become the official result of

1 such primary, election, or runoff. The cost of such recounts shall not be charged to any
2 candidate, political party or body, or elector.

3 (f) Any other provision of this Code section to the contrary notwithstanding, a candidate
4 or ten or more electors who cast ballots in the race in which the candidate ran may petition
5 the Secretary of State, in the case of a candidate in a race that is voted upon by electors in
6 more than one county, or the election superintendent, in the case of a candidate in a race
7 that is voted upon by the electors of one county or a portion of one county, for a hand
8 recount of the permanent paper records in all precincts when it appears that there are
9 similar discrepancies in more than one precinct between the hand count of a randomly
10 selected race pursuant to subsection (f) of Code Section 21-2-379.11 and the results for the
11 same race as shown on the DRE units. Upon receiving a proper petition, the Secretary of
12 State or the election superintendent, as appropriate, shall order a hand count to be
13 conducted of all of the permanent paper records for such race in all precincts. Such hand
14 count shall be held at any time prior to the certification of the consolidated returns by the
15 Secretary of State or the election superintendent, as appropriate. The hand count shall be
16 conducted by the appropriate superintendent or superintendents in the manner and pursuant
17 to the procedures otherwise provided in this Code section for counting paper ballots. The
18 petition pursuant to this Code section shall be in writing and signed by the person or
19 persons requesting the hand count. The petition shall set forth the discrepancies and any
20 evidence in support of the petitioner's request for a hand count and shall be verified. The
21 result of such hand count shall then become the official result of such primary, election, or
22 runoff."

23 **SECTION 8.**

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

26 "21-2-522.

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

- 29 (1) Misconduct, fraud, or irregularity by any primary or election official or officials
30 sufficient to change or place in doubt the result;
- 31 (2) When the defendant is ineligible for the nomination or office in dispute;
- 32 (3) When illegal votes have been received or legal votes rejected at the polls sufficient
33 to change or place in doubt the result;
- 34 (4) For any error in counting the votes or declaring the result of the primary or election,
35 if such error would change the result;

1 (5) When there is an unexplained discrepancy between the results of a hand count of a
2 race pursuant to subsection (f) of Code Section 21-2-379.11 and the results of such race
3 as shown by the DRE units in a precinct in which the person filing the contest was a
4 candidate and such discrepancy places the results of such race in doubt; or

5 ~~(5)~~(6) For any other cause which shows that another was the person legally nominated,
6 elected, or eligible to compete in a run-off primary or election."

7 **SECTION 9.**

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

9 **SECTION 10.**

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