

Senate Bill 194

By: Senators Staton of the 18th, Williams of the 19th, Wiles of the 37th, Harp of the 29th, Carter of the 13th and others

**AS PASSED**

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 that certain election officials shall be  
 3 certified by a certain date; to change the date of the presidential preference primary in  
 4 Georgia; to change the date by which the parties must submit names to the Secretary of State  
 5 for inclusion on the ballot and the date on which the Secretary of State shall publish such list  
 6 of names; to provide in certain circumstances that the county election superintendent may  
 7 begin the tabulation of absentee ballots prior to the close of the polls on the day of a primary,  
 8 election, or runoff; to provide procedures for such tabulation; to provide that absentee ballots  
 9 that are enclosed in an outer envelope but not contained in an inner envelope shall be  
 10 counted; to provide that a person may cancel his or her absentee ballot under certain  
 11 circumstances; to provide for related matters; to provide effective dates; to repeal conflicting  
 12 laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and  
 16 primaries generally, is amended by revising subsection (a) of Code Section 21-2-101, relating  
 17 to certification program for election superintendents or election board designee, as follows:  
 18 "(a) All election superintendents or, in the case of a board of elections or a board of  
 19 elections and registration, the designee of such board charged with the daily operations of  
 20 such board shall become certified by completing a certification program approved by the  
 21 Secretary of State by no later than ~~January 1, 2007~~ December 31 of the year in which they  
 22 are appointed. Such program may include instruction on, and may require the  
 23 superintendent to demonstrate proficiency in, the operation of the state's direct recording  
 24 electronic voting equipment and in state and federal law and procedures related to  
 25 elections. The local government employing the superintendent or designee shall cover the  
 26 costs, if any, incurred by such superintendent or designee's participation in the certification  
 27 program. Such certification programs shall be offered by the Secretary of State on

1 multiple occasions before ~~January 1, 2007~~, December 31 of the year in which such  
 2 superintendents or designees are appointed and shall not exceed 64 hours of classroom,  
 3 online, and practical instruction as authorized and approved by the Secretary of State."

#### 4 SECTION 2.

5 Said chapter is further amended by revising Code Section 21-2-191, relating to parties  
 6 entitled to hold primaries and the dates for such primaries, as follows:

7 "21-2-191.

8 As provided in this article, a presidential preference primary shall be held in ~~1992~~ 2008 and  
 9 every four years thereafter for each political party or body which has cast for its candidates  
 10 for President and Vice President in the last presidential election more than 20 percent of  
 11 the total vote cast for President and Vice President in the state, so that the electors may  
 12 express their preference for one person to be the candidate for nomination by such person's  
 13 party or body for the office of President of the United States; provided, however, that no  
 14 elector shall vote in the primary of more than one political party or body in the same  
 15 presidential preference primary. Such primary shall be held on ~~March 3, 1992~~ February 5,  
 16 2008, and on the first Tuesday in ~~March~~ February every four years thereafter. A state  
 17 political party or body may by rule choose to elect any portion of its delegates to that  
 18 party's or body's presidential nominating convention in the primary; and, if a state political  
 19 party or body chooses to elect any portion of its delegates, such state political party or body  
 20 shall establish the qualifying period for those candidates for delegate and delegate alternate  
 21 positions which are to be elected in the primary and for any party officials to be elected in  
 22 the primary and shall also establish the date on which state and county party executive  
 23 committees shall certify to the Secretary of State or the superintendent, as the case may be,  
 24 the names of any such candidates who are to be elected in the primary; provided, however,  
 25 that such dates shall not be later than ~~December 31 in~~ November 1 of the year preceding  
 26 the year in which the presidential preference primary is to be held."

#### 27 SECTION 3.

28 Said chapter is further amended by revising Code Section 21-2-193, relating to list of names  
 29 of candidates to appear on ballot, as follows:

30 "21-2-193.

31 Not later than ~~December 31 in~~ November 1 of the year preceding the year in which a  
 32 presidential preference primary is to be held, the state executive committee of each party  
 33 which is to conduct a presidential preference primary shall submit to the Secretary of State  
 34 a list of the names of the candidates of such party to appear on the presidential preference  
 35 primary ballot. Such lists shall be published by the Secretary of State in a newspaper of

1 general circulation in the state during the first week of ~~January~~ December in the year  
 2 immediately preceding the year in which the presidential preference primary is to be held."

### 3 SECTION 4.

4 Said chapter is further amended by revising Code Section 21-2-386, relating to safekeeping,  
 5 certification, and validation of absentee ballots, as follows:

6 "21-2-386.

7 (a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely and  
 8 unopened all official absentee ballots received from absentee electors prior to the  
 9 closing of the polls on the day of the primary or election except as otherwise provided  
 10 in this subsection.

11 (B) Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the  
 12 receipt of the ballot on its envelope. The registrar or clerk shall then compare the  
 13 identifying information on the oath with the information on file in his or her office,  
 14 shall compare the signature or mark on the oath with the signature or mark on the  
 15 absentee elector's voter registration card and application for absentee ballot or a  
 16 facsimile of said signature or mark taken from said card or application, and shall, if the  
 17 information and signature appear to be valid and other identifying information appears  
 18 to be correct, so certify by signing or initialing his or her name below the voter's oath.  
 19 Each elector's name so certified shall be listed by the registrar or clerk on the numbered  
 20 list of absentee voters prepared for his or her precinct.

21 (C) If the elector has failed to sign the oath, or if the signature does not appear to be  
 22 valid, or if the elector has failed to furnish required information or information so  
 23 furnished does not conform with that on file in the registrar's or clerk's office, or if the  
 24 elector is otherwise found disqualified to vote, the registrar or clerk shall write across  
 25 the face of the envelope 'Rejected,' giving the reason therefor. The board of registrars  
 26 or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of  
 27 which notification shall be retained in the files of the board of registrars or absentee  
 28 ballot clerk for at least one year.

29 (D) An elector who registered to vote by mail, but did not comply with subsection (c)  
 30 of Code Section 21-2-220, and who votes for the first time in this state by absentee  
 31 ballot shall include with his or her application for an absentee ballot or in the outer oath  
 32 envelope of his or her absentee ballot either one of the forms of identification listed in  
 33 subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank  
 34 statement, government check, paycheck, or other government document that shows the  
 35 name and address of such elector. If such elector does not provide any of the forms of  
 36 identification listed in this subparagraph with his or her application for an absentee

1 ballot or with the absentee ballot, such absentee ballot shall be deemed to be a  
 2 provisional ballot and such ballot shall only be counted if the registrars are able to  
 3 verify current and valid identification of the elector as provided in this subparagraph  
 4 within the time period for verifying provisional ballots pursuant to Code Section  
 5 21-2-419.

6 (E) Three copies of the numbered list of voters shall also be prepared for such rejected  
 7 absentee electors, giving the name of the elector and the reason for the rejection in each  
 8 case. Three copies of the numbered list of certified absentee voters and three copies of  
 9 the numbered list of rejected absentee voters for each precinct shall be turned over to  
 10 the poll manager in charge of counting the absentee ballots and shall be distributed as  
 11 required by law for numbered lists of voters.

12 (F) All absentee ballots returned to the board or absentee ballot clerk after the closing  
 13 of the polls on the day of the primary or election shall be safely kept unopened by the  
 14 board or absentee ballot clerk and then transferred to the appropriate clerk for storage  
 15 for the period of time required for the preservation of ballots used at the primary or  
 16 election and shall then, without being opened, be destroyed in like manner as the used  
 17 ballots of the primary or election. The board of registrars or absentee ballot clerk shall  
 18 promptly notify the elector by first-class mail that the elector's ballot was returned too  
 19 late to be counted and that the elector will not receive credit for voting in the primary  
 20 or election. All such late absentee ballots shall be delivered to the appropriate clerk and  
 21 stored as provided in Code Section 21-2-390.

22 (G) Notwithstanding any provision of this chapter to the contrary, until the United  
 23 States Department of Defense notifies the Secretary of State that the Department of  
 24 Defense has implemented a system of expedited absentee voting for those electors  
 25 covered by this subparagraph, absentee ballots cast in a primary, election, or runoff by  
 26 eligible absentee electors who reside outside the county or municipality in which the  
 27 primary, ~~runoff or election,~~ or runoff is held and are members of the armed forces of  
 28 the United States, members of the merchant marine of the United States, spouses or  
 29 dependents of members of the armed forces or merchant marine residing with or  
 30 accompanying such members, or overseas citizens that are postmarked by the date of  
 31 such primary, election, or runoff and are received within the three-day period following  
 32 such primary, election, or runoff, if proper in all other respects, shall be valid ballots  
 33 and shall be counted and included in the certified election results.

34 (2) After ~~12:00 Noon and until the closing~~ the opening of the polls on the day of the  
 35 primary, ~~or election,~~ or runoff, the registrars or absentee ballot clerks shall be authorized  
 36 to open the outer envelope on which is printed the oath of the elector in such a manner  
 37 as not to destroy the oath printed thereon; provided, however, that the registrars or

1 absentee ballot clerk shall not be authorized to remove the contents of such outer  
 2 envelope or to open the inner envelope marked 'Official Absentee Ballot,' except as  
 3 otherwise provided in this Code section. At least three persons who are registrars, deputy  
 4 registrars, poll workers, or absentee ballot clerks must be present before commencing;  
 5 and three persons who are registrars, deputy registrars, or absentee ballots clerks shall be  
 6 present at all times while the outer envelopes are being opened. After opening the outer  
 7 envelopes, the ballots shall be safely and securely stored until the time for tabulating such  
 8 ballots.

9 (3) A county ~~If the election superintendent desires to open the inner envelopes containing~~  
 10 ~~the absentee ballots after 3:00 P.M., but before 7:00 P.M., may, in his or her discretion,~~  
 11 ~~after 7:00 A.M. on the day of the primary, election, the election superintendent shall~~  
 12 ~~petition in writing the chief judge of the superior court of the county or, if such judge is~~  
 13 ~~a candidate in such election, such petition shall be submitted to the administrative judge~~  
 14 ~~of the judicial administrative district in which such county is located who shall assign~~  
 15 ~~such petition to a judge of the district who is not a candidate in such election at least~~  
 16 ~~seven days prior to the election for permission to~~ or runoff ~~open the inner envelopes in~~  
 17 ~~accordance with the procedures prescribed in this subsection. Such petition shall contain~~  
 18 ~~the names of persons designated to act as monitors of the process of opening the inner~~  
 19 ~~envelopes by the election superintendent or his or her designee. The~~ and begin tabulating  
 20 the absentee ballots. If the county election superintendent chooses to open the inner  
 21 envelopes and begin tabulating such ballots prior to the close of the polls on the day of  
 22 the primary, election, or runoff, the superintendent shall notify in writing, at least seven  
 23 days prior to the primary, election, or runoff, the county executive committee or, if there  
 24 is no organized county executive committee, the state executive committee of each  
 25 political party and political body having candidates whose names appear on the ballot for  
 26 such election in such county and each independent and nonpartisan candidate whose  
 27 name appears on the ballot for such primary, election, or runoff in such county of the  
 28 superintendent's intent to begin the absentee ballot tabulation prior to the close of the  
 29 polls and their right to appoint monitors to observe the tabulation. Such committee shall  
 30 have the right to designate two persons and each independent and nonpartisan candidate  
 31 whose name appears on the ballot for such election in such county shall have the right to  
 32 designate one person to act as monitors. Such executive committees and candidates shall  
 33 be given notice by the election superintendent of the superintendent's intent to request  
 34 permission to open the inner envelopes early and their right to designate monitors. The  
 35 executive committees and candidates shall be given at least seven days after the notice  
 36 by the election superintendent to designate monitors for inclusion in the petition for such  
 37 process. In the event that the only issue to be voted upon in an election is a referendum

1 question, the chief judge of the superior court of the county shall appoint two electors of  
 2 the county to monitor such process.

3 (4) The county election superintendent shall publish a written notice in the  
 4 superintendent's office of the superintendent's intent to begin the absentee ballot  
 5 tabulation prior to the close of the polls and publish such notice at least one week prior  
 6 to the primary, election, or runoff in the legal organ of the county. The chief judge, after  
 7 considering the petition, shall authorize the opening of the inner envelope of the absentee  
 8 ballots provided that the names of the persons to serve as monitors on behalf of the  
 9 political parties, political bodies, independent candidates, and nonpartisan candidates are  
 10 submitted in the petition by the election superintendent. The judge shall:

11 (A) ~~Designate the location where the inner envelopes shall be opened within the~~  
 12 ~~county;~~

13 (B) ~~Designate additional monitors for the process to be present during the opening of~~  
 14 ~~the inner envelopes, if the judge deems such persons necessary;~~

15 (C) ~~Administer an oath to each person who shall serve as a monitor and to each~~  
 16 ~~election official who shall participate in any manner in the process of opening the inner~~  
 17 ~~envelopes to which such persons shall swear or affirm that no inner envelopes shall be~~  
 18 ~~opened unless all monitors are present in the location designated by the judge, unless~~  
 19 ~~such monitor shall specifically give his or her permission for such process to continue~~  
 20 ~~in his or her absence; that no attempt shall be made to ascertain how any ballot was~~  
 21 ~~voted or to view the contents of any ballot; that no monitor shall handle, touch, or~~  
 22 ~~possess any ballot; and that no discussion of the procedure or of anything viewed~~  
 23 ~~during the opening of the envelopes will be held with any person who is not a part of~~  
 24 ~~the opening process before 7:00 P.M. on the day of the election;~~

25 (D) ~~Designate no less than two persons to take possession of and keep secure all such~~  
 26 ~~opened envelopes and ballots at all times prior to such envelopes and ballots being~~  
 27 ~~released to the manager of the absentee ballot precinct for counting; and~~

28 (E) ~~Provide such additional conditions and requirements as he or she deems necessary~~  
 29 ~~to preserve the integrity and confidentiality of such process, including instructions to~~  
 30 ~~monitors and election officials for the reporting of any unauthorized activity.~~

31 ~~Intentional and willful violation of such oath shall be a felony punishable pursuant to~~  
 32 ~~Code Section 21-2-600.~~

33 (5) The process for opening the inner envelopes of and tabulating absentee ballots after  
 34 12:00 Noon and before 7:00 P.M. on the day of an a primary, election, or runoff as  
 35 provided in this subsection shall be a confidential process to maintain the secrecy of all  
 36 ballots and to protect the disclosure of any balloting information before 7:00 P.M. on

1 election day. No absentee ballots shall be ~~counted~~ tabulated before 7:00 P.M. A.M. on  
 2 the day of a primary, election, or runoff day.

3 (6) All persons conducting the tabulation of absentee ballots during the day of a primary,  
 4 election, or runoff, including the vote review panel required by Code Section 21-2-483,  
 5 and all monitors and observers shall be sequestered until the time for the closing of the  
 6 polls. All such persons shall have no contact with the news media; shall have no contact  
 7 with other persons not involved in monitoring, observing, or conducting the tabulation;  
 8 shall not use any type of communication device including radios, telephones, and cellular  
 9 telephones; shall not utilize computers for the purpose of electronic mail, instant  
 10 messaging, or other forms of communication; and shall not communicate any information  
 11 concerning the tabulation until the time for the closing of the polls; provided, however,  
 12 that supervisory and technical assistance personnel shall be permitted to enter and leave  
 13 the area in which the tabulation is being conducted but shall not communicate any  
 14 information concerning the tabulation to anyone other than the county election  
 15 superintendent; the staff of the superintendent; those persons conducting, observing, or  
 16 monitoring the tabulation; and those persons whose technical assistance is needed for the  
 17 tabulation process to operate.

18 (7) The absentee ballots shall be tabulated in accordance with the procedures of this  
 19 chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be  
 20 placed into locked ballot boxes and may be transferred to locked ballot bags, if needed,  
 21 for security. The persons conducting the tabulation of the absentee ballots shall not cause  
 22 the tabulating equipment to produce any count, partial or otherwise, of the absentee votes  
 23 cast until the time for the closing of the polls.

24 (b) As soon as practicable after ~~12:00 Noon~~ 7:00 A.M. on the day of the primary, ~~or~~  
 25 election, or runoff, in precincts other than those in which optical scanning tabulators are  
 26 used, a registrar or absentee ballot clerk shall deliver the official absentee ballot of each  
 27 certified absentee elector, each rejected absentee ballot, applications for such ballots, and  
 28 copies of the numbered lists of certified and rejected absentee electors to the manager in  
 29 charge of the absentee ballot precinct of the county or municipality, which shall be located  
 30 in the precincts containing the county courthouse or polling place designated by the  
 31 municipal superintendent. In those precincts in which optical scanning tabulators are used,  
 32 such absentee ballots shall be taken to the tabulation center or other place designated by  
 33 the superintendent, and the official receiving such absentee ballots shall issue his or her  
 34 receipt therefor. ~~In~~ Except as otherwise provided in this Code section, in no event shall the  
 35 counting of the ballots begin before the polls close.

36 (c) Except as otherwise provided in this Code section, after the close of the polls on the  
 37 day of the primary, ~~or~~ election, or runoff, a manager shall then open the outer envelope in

1 such manner as not to destroy the oath printed thereon and shall deposit the inner envelope  
 2 marked 'Official Absentee Ballot' in a ballot box reserved for absentee ballots. In the event  
 3 that an outer envelope is found to contain an absentee ballot that is not in an inner  
 4 envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person  
 5 sealing the inner envelope, and deposited in the ballot box and counted in the same manner  
 6 as other absentee ballots, provided that such ballot is otherwise proper. Such manager with  
 7 two assistant managers, appointed by the superintendent, with such clerks as the manager  
 8 deems necessary shall count the absentee ballots following the procedures prescribed by  
 9 this chapter for other ballots, insofar as practicable, and prepare an election return for the  
 10 county or municipality showing the results of the absentee ballots cast in such county or  
 11 municipality.

12 (d) Any other provision of law to the contrary notwithstanding, if at any primary, general,  
 13 or special election in any county any question is to be voted on involving any political  
 14 subdivision which includes less than the entire county, all absentee ballots shall be  
 15 separated by precinct for counting purposes; and separate returns shall be certified for each  
 16 precinct in which absentee ballots were cast.

17 (e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall  
 18 open the envelopes and write 'Challenged,' the elector's name, and the alleged cause of  
 19 challenge on the back of the ballot, without disclosing the markings on the face thereof, and  
 20 shall deposit the ballot in the box; and it shall be counted as other challenged ballots are  
 21 counted. Where direct recording electronic voting systems are used for absentee balloting  
 22 and a challenge to an elector's right to vote is made prior to the time that the elector votes,  
 23 the elector shall vote on a paper or optical scanning ballot and such ballot shall be handled  
 24 as provided in this subsection. The board of registrars or absentee ballot clerk shall  
 25 promptly notify the elector of such challenge.

26 (f) It shall be unlawful at any time prior to the close of the polls for any person to disclose  
 27 or for any person to receive any information regarding the results of the tabulation of  
 28 absentee ballots except as expressly provided by law."

## 29 SECTION 5.

30 Said chapter is further amended by revising Code Section 21-2-388, relating to cancellation  
 31 of absentee ballots of electors who are present in the election precinct during primaries and  
 32 elections, as follows:

33 "21-2-388.

34 When an absentee ballot which has been voted shall be returned to and received by the  
 35 board of registrars, it shall be deemed to have been voted then and there; and no other  
 36 ~~absentee~~ ballot shall be issued to the same elector. ~~However, if~~ If an elector ~~who~~ has



1 requested to vote by absentee ballot ~~based upon the reason that the elector is required to be~~  
 2 ~~absent from the elector's precinct during the time of the primary or election in which the~~  
 3 ~~elector desires to vote is present in the precinct of the elector's residence during the time~~  
 4 ~~the polls are open in any primary, election, or runoff for which the elector has requested~~  
 5 ~~an absentee ballot or if the elector's circumstances change and the elector is no longer~~  
 6 ~~eligible to vote by absentee ballot under Code Section 21-2-380 and has not received such~~  
 7 ~~absentee ballot, has such ballot in his or her possession, or has returned such ballot but the~~  
 8 ~~registrars have not received such ballot, such elector ~~shall~~ may have the absentee ballot~~  
 9 ~~canceled and vote in person on the day of the primary, election, or runoff in one of the~~  
 10 following ways:

11 (1) ~~By~~ If the elector is in possession of the ballot, by surrendering the absentee ballot to  
 12 the poll manager of the precinct in which the elector's name appears on the electors list  
 13 and then being permitted to vote the regular ballot. The poll manager shall mark  
 14 'Canceled' and the date and time across the face of the absentee ballot and shall initial  
 15 same. The poll manager shall also make appropriate notations beside the name of the  
 16 elector on the electors list. All such canceled absentee ballots shall be returned with other  
 17 ballots to the superintendent; or

18 (2) If the elector has not received the ballot or if the elector has returned the ballot but  
 19 the registrars have not received the ballot, by ~~By~~ appearing in person before the registrars  
 20 or the absentee ballot clerk and requesting in writing that the envelope containing the  
 21 elector's absentee ballot be marked 'Canceled.' After having satisfied themselves as to  
 22 the identity of such elector, the registrars or the absentee ballot clerk shall grant the  
 23 request and shall notify the managers of the elector's precinct as to such action so as to  
 24 permit the elector to vote in person in that precinct. ~~If the absentee ballot is in the~~  
 25 ~~possession of the registrars or the absentee ballot clerk, it shall be promptly marked~~  
 26 ~~'Canceled' and the date and time written across the face of the envelope.~~ If the absentee  
 27 ballot is in the mail or its exact location is unknown, the registrar or the absentee ballot  
 28 clerk shall write 'Canceled' beside the elector's name on the master list of absentee voters  
 29 and shall cancel the ballot itself as soon as it is received. Canceled absentee ballots shall  
 30 be disposed of in the same manner as provided in subsection (a) of Code Section  
 31 21-2-386 for absentee ballots returned too late to be cast."

## 32 SECTION 6.

33 This Act shall become effective on July 1, 2007.

## 34 SECTION 7.

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