

Senate Bill 82

By: Senators Ligon, Jr. of the 3rd, McKoon of the 29th, Crosby of the 13th, Williams of the 19th and Rogers of the 21st

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 primaries and elections generally, so as to provide for oaths of election superintendents and
3 election supervisors and designees of boards of election; to provide that appointments of poll
4 officers shall be made available to the public; to clarify who may vote in runoff primaries;
5 to provide for the qualifying dates for nonpartisan candidates; to provide that the list of
6 persons who have qualified with the state executive committee of a political party shall be
7 provided to the office of the Secretary of State; to clarify the manner of appointment of
8 registrars; to require registrars to check the data bases of convicted felons and deceased
9 persons maintained by the Secretary of State prior to approving a voter registration
10 application; to provide for the confidentiality of e-mail addresses maintained by registrars;
11 to provide for certain adjustments to precincts which contain more than 2,000 electors when
12 all those electors desiring to vote at the last general election were unable to complete voting
13 within one hour following the closing of the polls; to remove the requirement to certify that
14 each election shall be conducted using certain voting equipment; to allow the use of the
15 federal write-in ballot for voting on constitutional amendments and referenda; to clarify that
16 the registrars or absentee ballot clerk may deliver an absentee ballot to an elector who is
17 confined in a hospital; to provide for the time for preparation and transmittal of absentee
18 ballots; to provide for a notice to be included with absentee ballots of all withdrawn,
19 deceased, and disqualified candidates and any substitute candidates; to provide for certain
20 notices with regard to the early processing and tabulation of absentee ballots; to provide for
21 the option to use different primaries and elections for the pilot project for electronic
22 transmission of certain absentee ballots; to change certain provisions regarding the
23 maintenance of sample or facsimile ballots; to provide that the superintendent shall provide
24 at polling places copies of sample or facsimile ballots for such primary or election and a list
25 of the certified write-in candidates; to remove certain archaic language regarding vote
26 tabulation machines; to provide for additional vote review panels; to change certain
27 provisions regarding the time for certifying election results; to provide for a method for
28 recounts for certain elections regarding constitutional amendments and binding referenda;

29 to provide for the swearing in of certain persons; to provide for the crime of solicitation of
 30 voter fraud; to provide for punishment; to provide for related matters; to provide for effective
 31 dates; to repeal conflicting laws; and for other purposes.

32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

33 **SECTION 1.**

34 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and
 35 elections generally, is amended by revising paragraph (15) of Code Section 21-2-70, relating
 36 to powers and duties of superintendents, as follows:

37 "(15)(A) In the case of a judge of the probate court serving as the election
 38 superintendent, such person shall take an oath in the following form upon assuming
 39 the duties of election superintendent which shall apply to all primaries and elections
 40 conducted by such person throughout such person's tenure as election superintendent:

41 I, _____, do swear (or affirm) that I will as
 42 superintendent duly attend ~~the~~ all ensuing ~~election (or primary)~~ primaries and
 43 elections during the continuance thereof, that I will to the best of my ability prevent
 44 any fraud, deceit, or abuse in carrying on the same, that I will make a true and perfect
 45 return of ~~the said election (or primary)~~ such primaries and elections, and that I will at
 46 all times truly, impartially, and faithfully perform my duties in accordance with
 47 Georgia laws to the best of my judgment and ability.

48 (B) In the case of a board of elections, each member of the board shall take an oath in
 49 the following form upon becoming a member of the board which shall apply to all
 50 primaries and elections conducted by the board throughout such person's tenure on the
 51 board:

52 I, _____, do swear (or affirm) that I will as a member of
 53 the board of elections duly attend all ensuing primaries and elections during the
 54 continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or
 55 abuse in carrying on the same, that I will make a true and perfect return of such
 56 primaries and elections, and that I will at all times truly, impartially, and faithfully
 57 perform my duties in accordance with Georgia laws to the best of my judgment and
 58 ability.

59 (C) In the case of an election supervisor or designee for a board of elections or board
 60 of elections and registration, the election supervisor or designee shall take an oath in
 61 the following form upon being appointed as an election supervisor or designee of the
 62 board which shall apply to all primaries and elections conducted by the board
 63 throughout such person's tenure:

64 I, _____, do swear (or affirm) that I will duly attend all
 65 ensuing primaries and elections during the continuance thereof, that I will to the best
 66 of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will
 67 make a true and perfect return of such primaries and elections, and that I will at all
 68 times truly, impartially, and faithfully perform my duties in accordance with Georgia
 69 laws to the best of my judgment and ability.

70 (D) Each judge of the probate court serving as an election superintendent, each
 71 member of a board of elections or board of elections and registration, and each election
 72 supervisor or designee for a board of elections or board of elections and registration
 73 serving on July 1, 2011, shall take the appropriate oath as set forth in this Code section
 74 which shall apply to all primaries and elections conducted throughout such person's
 75 tenure in that position.

76 **SECTION 2.**

77 Said chapter is further amended by revising Code Section 21-2-90, relating to the
 78 appointment of chief manager and assistant managers, as follows:

79 "21-2-90.

80 All elections and primaries shall be conducted in each polling place by a board consisting
 81 of a chief manager, who shall be chairperson of such board, and two assistant managers
 82 assisted by clerks. The managers of each polling place shall be appointed by the
 83 superintendent or, in the case of municipal elections, by the municipal governing authority.
 84 If the political parties involved elect to do so, they may submit to the superintendent or
 85 municipal governing authority, for consideration in making such appointment, a list of
 86 qualified persons. When such lists are submitted to the appropriate office, the
 87 superintendent or municipal governing authority, insofar as practicable, shall make
 88 appointments so that there shall be equal representation on such boards for the political
 89 parties involved in such elections or primaries. The superintendent or municipal governing
 90 authority shall make each appointment by entering an order which shall remain of record
 91 in the appropriate office and shall ~~transmit a copy of~~ make such order ~~to the appointee~~
 92 available for public inspection upon request. The order shall include the name and address
 93 of the appointee, his or her title, and a designation of the precinct and primary or election
 94 in which he or she is to serve."

95 **SECTION 2A.**

96 Said chapter is further amended by revising paragraph (1) of subsection (i) of Code
 97 Section 21-2-132, relating to filing notice of candidacy, nomination petition, and affidavit,
 98 as follows:

99 "(1) All candidates seeking election in a nonpartisan election shall file their notice of
 100 candidacy and pay the prescribed qualifying fee by the date prescribed in this paragraph
 101 in order to be eligible to have their names placed on the nonpartisan election ballot by the
 102 Secretary of State or election superintendent, as the case may be, in the following
 103 manner:

104 (A) Each candidate for the office of judge of the superior court, Judge of the Court of
 105 Appeals, or Justice of the Supreme Court, or the candidate's agent, desiring to have his
 106 or her name placed on the nonpartisan election ballot shall file a notice of candidacy,
 107 giving his or her name, residence address, and the office sought, in the office of the
 108 Secretary of State ~~no earlier than 9:00 A.M. on the last Monday in July immediately~~
 109 ~~prior to the election and no later than 12:00 Noon on the Friday following the last~~
 110 Monday in July at the same time as candidates for party nomination in the general
 111 primary as provided in paragraph (1) of subsection (c) of Code Section 21-2-153,
 112 notwithstanding the fact that any such days may be legal holidays; and

113 (B) Each candidate for a county judicial office, a local school board office, or an office
 114 of a consolidated government, or the candidate's agent, desiring to have his or her name
 115 placed on the nonpartisan election ballot shall file a notice of candidacy in the office
 116 of the superintendent ~~no earlier than 9:00 A.M. on the last Monday in July immediately~~
 117 ~~prior to the election and no later than 12:00 Noon on the Friday following the last~~
 118 Monday in July at the same time as candidates for party nomination in the general
 119 primary as provided in paragraph (1) of subsection (c) of Code Section 21-2-153,
 120 notwithstanding the fact that any such days may be legal holidays;"

121 SECTION 3.

122 Said chapter is further amended by revising Code Section 21-2-152, relating to the conduct
 123 of primaries generally, by adding a new subsection to read as follows:

124 "(c) A run-off primary shall be a continuation of the primary and only persons who were
 125 entitled to vote in the primary shall be entitled to vote therein; and only those votes cast for
 126 the persons designated for the runoff shall be counted in the tabulation and canvass of the
 127 votes cast. Any elector who votes in the primary of one party shall not be eligible to vote
 128 in a primary runoff of any other party other than a primary runoff of the party in whose
 129 primary such elector voted."

130 SECTION 4.

131 Said chapter is further amended by revising paragraph (1) of subsection (d) of Code
 132 Section 21-2-153, relating to posting of list of all qualified candidates for party nomination,
 133 as follows:

134 "(d)(1) Within two hours after the qualifications have ceased, the county executive
 135 committee of each political party shall post at the ~~county courthouse~~ office of the county
 136 election superintendent a list of all candidates who have qualified with such executive
 137 committee, and the state executive committee of each political party shall ~~post~~ provide
 138 a list of all candidates who have qualified with such committee ~~at the courthouse of the~~
 139 ~~county in which such executive committee's office is located~~ to the office of the Secretary
 140 of State. If the election superintendent qualifies the candidates for a political party in
 141 accordance with subsection (c) of this Code section, the election superintendent shall post
 142 at ~~the county courthouse~~ his or her office a list of all the candidates who have qualified
 143 with such superintendent for such political party."

144

SECTION 5.

145 Said chapter is further amended by revising subsections (a) and (e) of Code
 146 Section 21-2-212, relating to the appointment of county registrars, as follows:

147 "(a) ~~The~~ Except in the case in which a county has a board of elections and registration, the
 148 judge of the superior court in each county or the senior judge in time of service in those
 149 counties having more than one judge shall appoint in accordance with this Code section,
 150 upon the recommendation of the grand jury of such county, not less than three nor more
 151 than five judicious, intelligent, and upright electors of such county as county registrars.
 152 The grand jury shall submit to the judge the names of a number of electors equal to twice
 153 the number of persons to be appointed and the appointment shall be made therefrom and
 154 shall be entered on the minutes of the court. When making such appointments when
 155 appropriate, the judge will designate one of the registrars as chief registrar who shall serve
 156 as such during such registrar's term of office, and such designation shall likewise be entered
 157 on the minutes of the court. It shall be the duty of the clerk of the superior court to certify
 158 the appointments and designation to the Secretary of State within 30 days after the
 159 appointments and designation, and commissions shall be issued as for county officers.
 160 When certifying such names to the Secretary of State, the clerk of the superior court shall
 161 also list the addresses of the registrars. ~~Such~~ Except in the case in which the local Act
 162 creating a county board of elections and registration specifically provides for the
 163 appointment and removal by another authority, such judge will have the right to remove
 164 one or more of such registrars at any time for cause after notice and hearing. In case of the
 165 death, resignation, or removal of a registrar, the judge shall appoint a successor who shall
 166 serve until the next grand jury convenes, at which time the grand jury shall submit to the
 167 judge the names of two judicious, intelligent, and upright electors of such county; and the
 168 judge shall make an appointment from said list, such successor to serve the unexpired term
 169 of such registrar's predecessor in office. In the event the grand jury is in session at the time

170 of any such death, removal, or resignation, such grand jury shall immediately submit the
 171 names of said electors to the judge for such appointment. Each such appointment or
 172 change in designation shall be entered on the minutes of the court and certified as provided
 173 in this Code section."

174 ~~"(e) Any other provision of this Code section to the contrary notwithstanding, in any~~
 175 ~~county of this state having a population of more than 600,000 according to the United~~
 176 ~~States decennial census of 1990 or any future such census~~ If, within 90 days of the end of
 177 the term or the creation of a vacancy for a county registrar, an appointment is not made in
 178 accordance with subsection (a) of this Code section, the governing authority of the county
 179 shall appoint the county registrars in lieu of the judge of the superior court. The
 180 appointments shall be entered on the minutes of the county governing authority. The
 181 county governing authority shall designate one of the registrars as chief registrar, who shall
 182 serve as such during such registrar's term of office. Such designation shall likewise be
 183 entered on the minutes of such governing authority. It shall be the duty of the county
 184 governing authority to certify the appointments and designation to the Secretary of State
 185 and the clerk of the superior court within 30 days after such appointments and designation.
 186 In certifying such names to the Secretary of State and the clerk of the superior court, the
 187 county governing authority shall also list the addresses of the registrars. Such registrars
 188 shall serve ~~at the pleasure of the governing authority of the county, and the compensation~~
 189 ~~of the registrars shall be fixed by the governing authority of the county~~ for the term and in
 190 the manner set forth in subsection (a) of this Code section. Any registrar shall have the
 191 right to resign at any time by submitting a resignation to ~~such governing authority~~ the clerk
 192 of the superior court. In the event of the death, resignation, or removal of any registrar,
 193 such registrar's duties and authority as such shall terminate instantly. Successors shall be
 194 appointed ~~by the county governing authority. Each appointment or change in designation~~
 195 ~~shall be entered on the minutes of such governing authority and certified as provided in this~~
 196 ~~Code section. The first appointments in any such county under this article shall be made~~
 197 ~~in the year 1965, and the persons appointed shall assume office July 1, 1965. The~~
 198 ~~governing authorities of such counties may furnish such employees and facilities as they~~
 199 ~~deem necessary for the operation of the office and affairs of the registrars~~ as set forth in
 200 subsection (a) of this Code section."

201 **SECTION 6.**

202 Said chapter is further amended by revising Code Section 21-2-216, relating to qualifications
 203 of electors generally, by adding a new subsection to read as follows:

204 "(h) Prior to approving the application of a person to register to vote, the registrars may
 205 check the data bases of persons convicted of felonies and deceased persons maintained by
 206 the Secretary of State."

207 **SECTION 7.**

208 Said chapter is further amended by revising subsection (b) of Code Section 21-2-225, relating
 209 to limitations on registration data available for public inspection, as follows:

210 "(b) Except as provided in Code Section 21-2-225.1, all data collected and maintained on
 211 electors whose names appear on the list of electors maintained by the Secretary of State
 212 pursuant to this article shall be available for public inspection with the exception of bank
 213 statements submitted pursuant to subsection (c) of Code Section 21-2-220 and
 214 subsection (c) of Code Section 21-2-417, the month and day of birth, the social security
 215 numbers, e-mail addresses, and driver's license numbers of the electors, and the locations
 216 at which the electors applied to register to vote, which shall remain confidential and shall
 217 be used only for voter registration purposes; provided, however, that any and all
 218 information relating to the dates of birth, social security numbers, and driver's license
 219 numbers of electors may be made available to other agencies of this state, to agencies of
 220 other states and territories of the United States, and to agencies of the federal government
 221 if the agency is authorized to maintain such information and the information is used only
 222 to identify the elector on the receiving agency's data base and is not disseminated further
 223 and remains confidential. Information regarding an elector's year of birth shall be available
 224 for public inspection."

225 **SECTION 8.**

226 Said chapter is further amended by revising Code Section 21-2-263, relating to reduction in
 227 size of precincts containing more than 2,000 electors when voting in such precincts at
 228 previous general election not completed one hour after closing of polls, as follows:

229 "21-2-263.

230 If at the previous general election a precinct contained more than 2,000 electors and if all
 231 those electors desiring to vote had not completed voting one hour following the closing of
 232 the polls, the superintendent shall either reduce the size of said precinct so that it shall
 233 contain not more than 2,000 electors in accordance with the procedures prescribed by this
 234 chapter for the division, alteration, and consolidation of precincts no later than 60 days
 235 before the next general election or provide additional voting equipment or poll workers or
 236 both before the next general election. For administering this Code section, the chief
 237 manager of a precinct which contained more than 2,000 electors at the previous general
 238 election shall submit a report thereof, under oath, to the superintendent as to the time

239 required for completion of voting by all persons in line at the time the polls were closed.
 240 Any such change in the boundaries of a precinct shall conform with the requirements of
 241 subsection (a) of Code Section 21-2-261.1."

242 **SECTION 9.**

243 Said chapter is further amended by revising subsection (d) of Code Section 21-2-379.2,
 244 relating to written verification and certification prior to election or primary, as follows:

245 ~~"(d) At least ten days prior to any primary or election, including special primaries, special~~
 246 ~~elections, and referendum elections, the election superintendent shall verify and certify in~~
 247 ~~writing to the Secretary of State that all voting will occur on equipment certified by the~~
 248 ~~Secretary of State~~ Reserved."

249 **SECTION 10.**

250 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code
 251 Section 21-2-381, relating to making of application for absentee ballot, as follows:

252 "(2) If found eligible, the registrar or absentee ballot clerk shall certify by signing in the
 253 proper place on the application and shall either mail the ballot as provided in this Code
 254 section or issue the ballot to the elector to be voted within the confines of the registrar's
 255 or absentee ballot clerk's office. The registrar or absentee ballot clerk may ~~or~~ deliver the
 256 ballot in person to the elector if such elector is confined to a hospital."

257 **SECTION 11.**

258 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code
 259 Section 21-2-381.1, relating to procedures for voting with special write-in absentee ballots
 260 by qualified absentee electors, as follows:

261 "(2) Except as provided in paragraph (3) of this subsection, an elector who is entitled to
 262 vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee
 263 Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, may vote in any election for
 264 a public office other than for a federal office by using the addendum provided in the
 265 federal write-in absentee ballot and writing in the title of the office and the name of the
 266 candidate for whom the elector is voting. In a general, special, or run-off election, the
 267 elector may alternatively designate a candidate by writing in a party preference for each
 268 office, the names of specific candidates for each office, or the name of the person who
 269 the elector prefers for each office. A written designation of the political party shall be
 270 counted as a vote for the candidate of that party. In addition, such elector may vote on
 271 any constitutional amendment or question presented to the electors in such election by

272 identifying the constitutional amendment or question with regard to which such elector
 273 desires to vote and specifying the elector's vote on such amendment or question."

274 **SECTION 12.**

275 Said chapter is further amended by revising subsections (a) and (b) of Code
 276 Section 21-2-384, relating to preparation and delivery of absentee ballots and supplies, as
 277 follows:

278 ~~"(a)(1) The superintendent must, at least 45 days prior to any general primary or general~~
 279 ~~election other than a municipal general primary or general election, and at least 21 days~~
 280 ~~prior to any municipal general primary or general election, shall, in consultation with the~~
 281 ~~board of registrars or absentee ballot clerk, prepare, obtain, and deliver before the date~~
 282 ~~specified in paragraph (2) of this subsection an adequate supply of official absentee~~
 283 ~~ballots to the board of registrars or absentee ballot clerk for use in the primary or election~~
 284 ~~or as soon as possible prior to a runoff. Envelopes and other supplies as required by this~~
 285 ~~article may be ordered by the superintendent, the board of registrars, or the absentee~~
 286 ~~ballot clerk for use in the primary or election.~~

287 (2) The board of registrars or absentee ballot clerk shall, ~~within two days after the receipt~~
 288 ~~of such ballots and supplies,~~ mail or issue official absentee ballots to all eligible
 289 applicants at least 45 days, but no earlier than 46 days, prior to any presidential
 290 preference primary, general primary, general election other than a municipal general
 291 primary or general election, or special election in which there is a candidate for a federal
 292 office on the ballot; at least 21 days, but no earlier than 22 days, prior to any municipal
 293 general primary or general election; and as soon as possible prior to a runoff. In the case
 294 of all other special elections, the board of registrars or absentee ballot clerk shall mail or
 295 issue official absentee ballots to all eligible applicants within two days after the receipt
 296 of such ballots and supplies, but no earlier than 22 days prior to the election; provided,
 297 however, that should any elector of the jurisdiction be permitted to vote beginning 45
 298 days prior to a primary or election, all electors of such jurisdiction shall be entitled to
 299 vote beginning 45 days prior to such primary or election. As additional applicants are
 300 determined to be eligible, the board or clerk shall mail or issue official absentee ballots
 301 to such additional applicants immediately upon determining their eligibility; provided,
 302 however, that no absentee ballot shall be mailed by the registrars or absentee ballot clerk
 303 on the day prior to a primary or election and provided, further, that no absentee ballot
 304 shall be issued on the day prior to a primary or election. The board of registrars shall, at
 305 least 45 days prior to any general primary, or general election other than a municipal
 306 general primary or general election, and at least 21 days prior to any municipal general
 307 primary or general election, mail or electronically transmit official absentee ballots to all

308 electors who are entitled to vote by absentee ballot under the federal Uniformed and
309 Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended.

310 (3) The date a ballot is voted in the registrars' or absentee ballot clerk's office or the date
311 a ballot is mailed to an elector and the date it is returned shall be entered on the
312 application record therefor.

313 (4) The delivery of an absentee ballot to a person confined in a hospital may be made by
314 the registrar or clerk on the day of a primary or election or during a five-day period
315 immediately preceding the day of such primary or election.

316 (5) In the event an absentee ballot which has been mailed by the board of registrars or
317 absentee ballot clerk is not received by the applicant, the applicant may notify the board
318 of registrars or absentee ballot clerk and sign an affidavit stating that the absentee ballot
319 has not been received. The board of registrars or absentee ballot clerk shall then issue a
320 second absentee ballot to the applicant and cancel the original ballot issued. The affidavit
321 shall be attached to the original application. A second application for an absentee ballot
322 shall not be required.

323 (b) In addition to the mailing envelope, the superintendent, board of registrars, or absentee
324 ballot clerk shall provide two envelopes for each official absentee ballot, of such size and
325 shape as shall be determined by the Secretary of State, in order to permit the placing of one
326 within the other and both within the mailing envelope. On the smaller of the two envelopes
327 to be enclosed in the mailing envelope shall be printed the words 'Official Absentee Ballot'
328 and nothing else. On the back of the larger of the two envelopes to be enclosed within the
329 mailing envelope shall be printed the form of oath of the elector and the oath for persons
330 assisting electors, as provided for in Code Section 21-2-409, and the penalties provided for
331 in Code Sections 21-2-568, 21-2-573, 21-2-579, and 21-2-599 for violations of oaths; and
332 on the face of such envelope shall be printed the name and address of the board of
333 registrars or absentee ballot clerk. The mailing envelope addressed to the elector shall
334 contain the two envelopes, the official absentee ballot, ~~and~~ the uniform instructions for the
335 manner of preparing and returning the ballot, in form and substance as provided by the
336 Secretary of State, and a notice in the form provided by the Secretary of State of all
337 withdrawn, deceased, and disqualified candidates and any substitute candidates pursuant
338 to Code Sections 21-2-134 and 21-2-155 and nothing else. The uniform instructions shall
339 include information specific to the voting system used for absentee voting concerning the
340 effect of overvoting or voting for more candidates than one is authorized to vote for a
341 particular office and information concerning how the elector may correct errors in voting
342 the ballot before it is cast including information on how to obtain a replacement ballot if
343 the elector is unable to change the ballot or correct the error."

344

SECTION 13.

345 Said chapter is further amended by revising paragraph (3) of subsection (a) of Code
 346 Section 21-2-386, relating to safekeeping, certification, and validation of absentee ballots,
 347 as follows:

348 "(3) A county election superintendent may, in his or her discretion, after 7:00 A.M. on
 349 the day of the primary, election, or runoff open the inner envelopes in accordance with
 350 the procedures prescribed in this subsection and begin tabulating the absentee ballots. If
 351 the county election superintendent chooses to open the inner envelopes and begin
 352 tabulating such ballots prior to the close of the polls on the day of the primary, election,
 353 or runoff, the superintendent shall notify in writing, at least seven days prior to the
 354 primary, election, or runoff, the ~~county executive committee or, if there is no organized~~
 355 ~~county executive committee, the state executive committee of each political party and~~
 356 ~~political body having candidates whose names appear on the ballot for such election in~~
 357 ~~such county and each independent and nonpartisan candidate whose name appears on the~~
 358 ~~ballot for such primary, election, or runoff in such county~~ Secretary of State of the
 359 superintendent's intent to begin the absentee ballot tabulation prior to the close of the
 360 polls ~~and their right to appoint monitors to observe the tabulation. Such committee~~ The
 361 county executive committee or, if there is no organized county executive committee, the
 362 state executive committee of each political party and political body having candidates
 363 whose names appear on the ballot for such election in such county shall have the right to
 364 designate two persons and each independent and nonpartisan candidate whose name
 365 appears on the ballot for such election in such county shall have the right to designate one
 366 person to act as monitors for such process. In the event that the only issue to be voted
 367 upon in an election is a referendum question, the superintendent shall also notify in
 368 writing the chief judge of the superior court of the county who shall appoint two electors
 369 of the county to monitor such process."

370

SECTION 14.

371 Said chapter is further amended by revising Code Section 21-2-387, relating to pilot program
 372 for electronic handling of absentee ballots, as follows:

373 "21-2-387.

374 (a) The Secretary of State shall develop and implement a pilot program for the electronic
 375 transmission, receipt, and counting of absentee ballots by persons who are entitled to vote
 376 by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting
 377 Act, 42 U.S.C. Section 1973ff, et seq., as amended, for use in a primary or a general
 378 ~~election and general election runoff.~~

379 (b) Such pilot program shall provide, at a minimum, for:

- 380 (1) The encryption of information and the transmission of such information over a secure
 381 network;
- 382 (2) The authentication of such information;
- 383 (3) The verification of the identity and eligibility of the elector to vote in the primary,
 384 election, or runoff, as the case may be;
- 385 (4) The protection of the privacy, anonymity, and integrity of the ballots cast;
- 386 (5) The prevention of the casting of multiple ballots by the same elector in ~~an~~ a primary,
 387 election, or runoff;
- 388 (6) The prevention of any tampering, abuse, fraudulent use, or illegal manipulation of
 389 such system;
- 390 (7) The uninterrupted reliability of such system for casting ballots by qualified voters;
- 391 (8) The capability of the elector to determine if the electronic transmission of the ballot
 392 was successful;
- 393 (9) The ability to audit such ballots and to verify that such ballots were properly counted;
 394 and
- 395 (10) The ability to verify that the information transmitted over the secure network was
 396 not viewed or altered by sites that lie between the voting location and the vote counting
 397 destination.
- 398 (c) The Secretary of State shall develop procedures by which persons who are eligible to
 399 utilize the pilot program to vote shall be notified of its availability and the procedures and
 400 methods for its utilization.
- 401 (d) The provisions of this article shall apply to ballots requested, transmitted, voted,
 402 received, and counted under this pilot program as nearly as practicable, but the Secretary
 403 of State and the State Election Board shall be authorized to vary such provisions by rule
 404 or regulation as necessary to accomplish the goals of this pilot program, provided that such
 405 variances shall retain and maintain the same degree of security and integrity of such ballots
 406 as provided by this article although in different forms or formats as necessitated by the
 407 technology utilized in such pilot program. The Secretary of State and the State Election
 408 Board are authorized to promulgate such rules and regulations as necessary to implement
 409 the provisions of this Code section and to provide for such variances to this article as
 410 needed pursuant to this subsection.
- 411 (e) The Secretary of State shall review the results of the pilot program and shall provide
 412 the members of the General Assembly with a comprehensive report no later than 90 days
 413 following the primary or general election ~~and general election runoff~~ in which such pilot
 414 program is used on the effectiveness of such pilot program with any recommendations for
 415 its continued use and any needed changes in such program for future primaries and
 416 elections.

417 (f) The pilot program shall be used in the first primary or general election ~~and general~~
 418 ~~election runoff~~ following:

419 (1) The inclusion in the Appropriations Act of a specific line item appropriation for
 420 funding of such pilot program or a determination by the Secretary of State that there is
 421 adequate funding through public or private funds, or a combination of public and private
 422 funds, to conduct the pilot program; provided, however, that no funds shall be accepted
 423 from registered political parties or political bodies for this purpose; and

424 (2) Certification by the Secretary of State that such pilot program is feasible and can be
 425 implemented for such primary or general election ~~and general election runoff~~.

426 (g) This Code section shall be repealed by operation of law on July 1 of the year following
 427 the conclusion of the pilot program."

428 **SECTION 15.**

429 Said chapter is further amended by revising subsection (c) of Code Section 21-2-400, relating
 430 to preparation and distribution of sample or facsimile ballot labels, as follows:

431 "(c) The superintendent shall prepare sample or facsimile ballots or ballot labels, as the
 432 case may be, for each general election which shall contain each question and the candidates
 433 who are offering for election for each office which will be voted upon in the county or
 434 municipality. ~~The superintendent shall maintain such sample or facsimile ballots or ballot~~
 435 ~~labels at the county courthouse~~ for distribution upon request to interested electors. Such
 436 sample or facsimile ballots or ballot labels shall comply with Code Section 21-2-575."

437 **SECTION 16.**

438 Said chapter is further amended by revising Code Section 21-2-401, relating to delivery of
 439 forms and supplies to precincts, by adding a new subsection to read as follows:

440 "(d) The superintendent shall provide at the polling place copies of the sample or facsimile
 441 ballots for such primary or election as well as a list of the certified write-in candidates for
 442 such election in the form as provided by the Secretary of State or appropriate municipal
 443 official pursuant to Code Section 21-2-133."

444 **SECTION 17.**

445 Said chapter is further amended by revising subsection (g) of Code Section 21-2-483, relating
 446 to counting of ballots, as follows:

447 "(g)(1) ~~The precinct tabulator shall be programmed to return to the voter at the time that~~
 448 ~~the voter inserts the ballot any ballot on which an overvote is indicated, along with any~~
 449 ~~ballot that cannot be processed by the tabulator for reevaluation or correction or spoiling~~

450 of the ballot, and a new ballot shall be issued if the voter desires to vote another ballot in
 451 order to correct mistakes, overvotes, or other problems.

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

456 ~~(B)~~(2)(A) In a partisan election, the vote review panel shall be composed of the
 457 election superintendent or designee thereof and one person appointed by the county
 458 executive committee of each political party and body having candidates whose names
 459 appear on the ballot for such election, provided that, if there is no organized county
 460 executive committee for a political party or body, the person shall be appointed by the
 461 state executive committee of the political party or body. In a nonpartisan election, the
 462 panel shall be composed of the election superintendent or designee thereof and two
 463 electors of the county, in the case of a county election, or the municipality, in the case
 464 of a municipal election, appointed by the chief judge of the superior court of the county
 465 in which the election is held or, in the case of a municipality which is located in more
 466 than one county, of the county in which the city hall of the municipality is located. The
 467 panel shall manually review all ballots rejected by the tabulator under ~~subparagraph (A)~~
 468 paragraph (1) of this paragraph subsection and shall determine by majority vote
 469 whether the elector's intent can be determined as described in subsection (c) of Code
 470 Section 21-2-438 and, if so, said vote shall be counted as the elector intended. In the
 471 event of a tie vote by the vote review panel, the vote of the election superintendent or
 472 designee thereof shall control.

473 (B) The election superintendent may create multiple vote review panels in accordance
 474 with subparagraph (A) of this paragraph to handle the processing of such ballots more
 475 efficiently. Upon the creation of such panels, the election superintendent shall
 476 designate one of the panels as the chief vote review panel. In the event of a
 477 disagreement on such additional panels, the ballots in question shall be reviewed by the
 478 chief vote review panel and decided in accordance with the procedures contained in
 479 subparagraph (A) of this paragraph."

480 **SECTION 18.**

481 Said chapter is further amended by revising subsection (k) of Code Section 21-2-493, relating
 482 to computation, canvassing, and tabulation of returns, as follows:

483 "(k) As the returns from each precinct are read, computed, and found to be correct or
 484 corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until
 485 all the returns from the various precincts which are entitled to be counted shall have been

486 duly recorded; then they shall be added together, announced, and attested by the assistants
 487 who made and computed the entries respectively and shall be signed by the superintendent.
 488 The consolidated returns shall then be certified by the superintendent in the manner
 489 required by this chapter. Such returns shall be certified by the superintendent not later than
 490 5:00 P.M. on the ~~seventh day~~ Monday following the date on which such election was held
 491 and such returns shall be immediately transmitted to the Secretary of State."

492 **SECTION 19.**

493 Said chapter is further amended by revising subsection (c) of Code Section 21-2-495, relating
 494 to procedure for recount or recanvass of votes, as follows:

495 "(c)(1) Whenever the difference between the number of votes received by a candidate
 496 who has been declared nominated for an office in a primary election or who has been
 497 declared elected to an office in an election or who has been declared eligible for a run-off
 498 primary or election and the number of votes received by any other candidate or
 499 candidates not declared so nominated or elected or eligible for a runoff shall be not more
 500 than 1 percent of the total votes which were cast for such office therein, any such
 501 candidate or candidates receiving a sufficient number of votes so that the difference
 502 between his or her vote and that of a candidate declared nominated, elected, or eligible
 503 for a runoff is not more than 1 percent of the total votes cast, within a period of two
 504 business days following the certification of the election results, shall have the right to a
 505 recount of the votes cast, if such request is made in writing by the losing candidate. If the
 506 office sought is a federal or state office voted upon by the electors of more than one
 507 county, the request shall be made to the Secretary of State who shall direct that the
 508 recount be performed in all counties in which electors voted for such office and notify the
 509 superintendents of the several counties involved of the request. In all other cases, the
 510 request shall be made to the superintendent. The superintendent or superintendents shall
 511 order a recount of such votes to be made immediately. If, upon such recount, it is
 512 determined that the original count was incorrect, the returns and all papers prepared by
 513 the superintendent, the superintendents, or the Secretary of State shall be corrected
 514 accordingly and the results recertified.

515 (2) Whenever the difference between the number of votes for approval or rejection of a
 516 constitutional amendment or binding referendum question shall be not more than 1
 517 percent of the total votes which were cast on such amendment or question therein, within
 518 a period of two business days following the certification of the election results, the
 519 Constitutional Amendments Publication Board shall be authorized in its discretion to call
 520 for a recount of the votes cast with regard to such amendment or question. In the case of
 521 a constitutional amendment or state-wide referendum question or a question voted upon

522 by the electors of more than one county, the board shall direct the Secretary of State to
 523 cause a recount to be performed with regard to such amendment or question in all
 524 counties involved and notify the superintendents of the recount. In the case of questions
 525 voted upon by the electors of only one county or municipality, the board shall direct the
 526 Secretary of State to cause a recount to be conducted by the county or municipality
 527 involved and the Secretary of State shall notify the superintendent involved of the
 528 recount. Upon notification, the superintendent or superintendents shall order a recount
 529 of such votes to be made immediately. If, upon such recount, it is determined that the
 530 original count was incorrect, the returns and all papers prepared by the superintendent,
 531 the superintendents, or the Secretary of State shall be corrected accordingly and the
 532 results recertified."

533 **SECTION 20.**

534 Said chapter is further amended by revising subsection (b) of Code Section 21-2-503, relating
 535 to issuance of commission to person whose election is contested, and by adding a new
 536 subsection to read as follows:

537 "(b) Upon the certification of the results of the election, a ~~A~~ person elected to a municipal
 538 office may be sworn into office notwithstanding that the election of such person may be
 539 contested in the manner provided by this chapter. Upon the final judgment of the proper
 540 tribunal having jurisdiction of a contested election which orders a second election or
 541 declares that another person was legally elected to the office, the person sworn into
 542 municipal office shall cease to hold the office and shall cease to exercise the powers,
 543 duties, and privileges of the office immediately.

544 (c) Upon the certification of the results of the election, a person elected to a federal, state,
 545 or county office may be sworn into office notwithstanding that the election of such person
 546 may be contested in the manner provided by this chapter. Upon the final judgment of the
 547 proper tribunal having jurisdiction of a contested election which orders a second election
 548 or declares that another person was legally elected to the office, the person sworn into such
 549 office shall cease to hold the office and shall cease to exercise the powers, duties, and
 550 privileges of the office immediately."

551 **SECTION 21.**

552 Said chapter is further amended by adding a new Code section to Article 15, relating to
 553 miscellaneous offenses, to read as follows:

554 "21-2-604.

555 (a)(1) A person commits the offense of criminal solicitation to commit election fraud in
 556 the first degree when, with intent that another person engage in conduct constituting a
 557 felony under this article, he or she solicits, requests, commands, importunes, or otherwise
 558 attempts to cause the other person to engage in such conduct.

559 (2) A person commits the offense of criminal solicitation to commit election fraud in the
 560 second degree when, with intent that another person engage in conduct constituting a
 561 misdemeanor under this article, he or she solicits, requests, commands, importunes, or
 562 otherwise attempts to cause the other person to engage in such conduct.

563 (b)(1) A person convicted of the offense of criminal solicitation to commit election fraud
 564 in the first degree shall be punished by imprisonment for not less than one nor more than
 565 three years.

566 (2) A person convicted of the offense of criminal solicitation to commit election fraud
 567 in the second degree shall be punished as for a misdemeanor.

568 (c) It is no defense to a prosecution for criminal solicitation to commit election fraud that
 569 the person solicited could not be guilty of the crime solicited.

570 (d) The provisions of subsections (a) through (c) of this Code section are cumulative and
 571 shall not supersede any other penal law of this state."

572 **SECTION 21A.**

573 (a) Section 2A of this Act shall become effective on July 1, 2011, only if House Bill 158 is
 574 passed by the General Assembly during the 2011 regular session and is approved by the
 575 Governor or becomes law without such approval. Otherwise, Section 2A shall be repealed
 576 by operation of law on such date and shall be of no force and effect.

577 (b) The remaining sections of this Act shall become effective on July 1, 2011.

578 **SECTION 22.**

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