Senate Bill 463
By: Senators Kennedy of the 18th, Dugan of the 30th, Gooch of the 51st, Jones of the 25th and Mullis of the 53rd

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, so as to remove provisions and references regarding direct recording electronic voting machines; to revise certain duties of the State Election Board; to provide for the deadline for registering to vote in certain runoffs; to provide for the number of voting booths or enclosures; to provide for the division of certain precincts under certain circumstances; to provide for certain reports on time required to vote; to provide for the acceptance of absentee ballots when certain identification is provided; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, is amended by repealing paragraph (4.1) of Code Section 21-2-2, relating to definitions, in its entirety.

SECTION 2.
Said chapter is further amended by revising paragraph (1) of Code Section 21-2-31, relating to duties of the State Election Board, as follows;
"(1) To promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in the carrying out of state law in all primaries and elections;"

SECTION 3.
Said chapter is further amended by revising subsection (c) of Code Section 21-2-152, relating to conduct of primaries generally and run-off primary, as follows:
(c) A run-off primary shall be a continuation of the primary and only persons who were entitled to vote in the primary shall be entitled to vote therein; and only those votes cast for the persons designated for the runoff shall be counted in the tabulation and canvass of the votes cast. Any elector who votes in the primary of one party shall not be eligible to vote in a primary runoff of any other party other than a primary runoff of the party in whose primary such elector voted. The deadline for persons to apply to register to vote before a run-off primary or any primary, election, or runoff held in conjunction with such run-off primary shall be the close of business on the fifth Monday prior to the date of such run-off primary or, if such Monday is a legal holiday, by the close of business on the following business day."

SECTION 4.

Said chapter is further amended by revising subsection (d) of Code Section 21-2-218, relating to cancellation of registration in former state or county and address changes and corrections, as follows:

"(d) In the event that an elector moves to a residence within the county or municipality but into a different precinct or who moves to a residence in the same precinct but at a different address and fails to notify the board of registrars of such fact by the fifth Monday prior to an election or primary, such elector shall vote in the precinct of such elector's former residence for such election or primary and for any runoffs resulting therefrom. The superintendent of an election shall make available at each polling place forms furnished by the Secretary of State which shall be completed by each such elector to reflect such elector's present legal residence. Such forms may also be used to notify the board of registrars of a change in an elector's name. The board of registrars shall thereafter place the elector in the proper precinct and voting districts and correct the list of electors accordingly. If the elector is placed in a precinct other than the one in which such elector has previously been voting, such elector shall be notified of the new polling place by first-class mail."

SECTION 5.

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

"21-2-263.

(a) If, at the previous general primary, election, or runoff, a precinct contained more than 2,000 electors and if all those electors desiring to vote on the day of the primary, election,
or runoff had not completed voting one hour following the closing of the polls, the superintendent shall either reduce the size of said precinct so that it shall contain not more than 2,000 electors in accordance with the procedures prescribed by this chapter for the division, alteration, and consolidation of precincts no later than 60 days before the next general election or provide additional voting equipment or poll workers or both before the next general election. For administering this Code section, the chief manager of a precinct which contained more than 2,000 electors at the previous general election shall submit a report thereof, under oath, to the superintendent as to the time required for completion of voting by all persons in line at the time the polls were closed. Any such change in the boundaries of a precinct shall conform with the requirements of subsection (a) of Code Section 21-2-261.1.

(b) If, at the previous primary, election, or runoff, a precinct contained more than 2,000 electors and if electors desiring to vote on the day of a primary, election, or runoff had to wait in line more than one hour before checking in to vote, the superintendent shall either reduce the size of said precinct so that it shall contain not more than 2,000 electors in accordance with the procedures prescribed by this chapter for the division, alteration, and consolidation of precincts no later than 60 days before the next general election or provide additional voting equipment or poll workers or both before the next general election. For administering this Code section, the chief manager of a precinct shall submit a report thereof, under oath, to the superintendent of the reported time from an elector entering the line to checking in to vote. Such wait time shall be measured no fewer than three different times throughout the day including morning, midday, and prior to the close of the polls or as otherwise designated by the election superintendent or the Secretary of State, and such results shall be recorded on a form provided by the Secretary of State. Any such change in the boundaries of a precinct shall conform with the requirements of subsection (a) of Code Section 21-2-261.1.

SECTION 6.

Said chapter is further amended by revising subsection (a) of Code Section 21-2-267, relating to equipment, arrangement, and storage at polling places, as follows:

"(a) The governing authority of each county and municipality shall provide and the superintendent shall cause all rooms used as polling places to be provided with suitable heat and light and, in precincts in which ballots are used, with a sufficient number of voting compartments or booths with proper supplies in which the electors may conveniently mark their ballots, with a curtain, screen, or door in the upper part of the front of each compartment or booth so that in the marking thereof they may be screened from the observation of others. A curtain, screen, or door shall not be required, however, for the
self-contained units used as voting booths in which direct recording electronic (DRE) voting units or electronic ballot markers are located if such booths have been designed so as to ensure the privacy of the elector. When practicable, every polling place shall consist of a single room, every part of which is within the unobstructed view of those present therein and shall be furnished with a guardrail or barrier closing the inner portion of such room, which guardrail or barrier shall be so constructed and placed that only such persons as are inside such rail or barrier can approach within six feet of the ballot box and voting compartments, or booths, or voting machines, as the case may be. The ballot box and voting compartments or booths shall be so arranged in the voting room within the enclosed space as to be in full view of those persons in the room outside the guardrail or barrier. The voting machine or machines shall be placed in the voting rooms within the enclosed space so that, unless its construction shall otherwise require, the ballot labels on the face of the machine can be plainly seen by the poll officers when the machine is not occupied by an elector. In the case of direct recording electronic (DRE) voting units or electronic ballot markers, the devices shall be arranged in such a manner as to ensure the privacy of the elector while voting on such devices, to allow monitoring of the devices by the poll officers while the polls are open, and to permit the public to observe the voting without affecting the privacy of the electors as they vote.

SECTION 7.

Said chapter is further amended by revising Code Section 21-2-293, relating to correction of mistakes and omissions on ballot, as follows:

21-2-293.

(a) If the election superintendent discovers that a mistake or omission has occurred in the printing of official ballots or in the programming of the display of the official ballot on DRE voting equipment or electronic ballot markers for any primary or election, the superintendent is authorized on his or her own motion to take such steps as necessary to correct such mistake or omission if the superintendent determines that such correction is feasible and practicable under the circumstances; provided, however, that the superintendent gives at least 24 hours' notice to the Secretary of State and any affected candidates of the mistake or omission prior to making such correction.

(b) When it is shown by affidavit that a mistake or omission has occurred in the printing of official ballots or in the programming of the display of the official ballot on DRE voting equipment or electronic ballot markers for any primary or election, the superior court of the proper county may, upon the application of any elector of the county or municipality, require the superintendent to correct the mistake or omission or to show cause why he or she should not do so.
SECTION 8.
Said chapter is further amended by revising subsection (b) of Code Section 21-2-367, relating to installation of systems, number of systems, and good working order, as follows:

“(b) In each precinct in which optical scanning voting systems are used in a November general election in an even-numbered year, the county or municipal governing authority, as appropriate, election superintendent shall provide at least one voting booth or enclosure for each 250 electors therein, or fraction thereof. For any other primary, election, or runoff, the county or municipal elections superintendent may provide a greater or lesser number of voting booths or enclosures if, after a thorough consideration of the type of election, expected turnout, the number of electors who have already voted by advance voting or absentee ballot, and other relevant factors that inform the appropriate amount of equipment needed, the superintendent determines that a different amount of equipment is needed or sufficient. Such determination shall be subject to the provisions of Code Section 21-2-263.”

SECTION 9.
Said chapter is further amended by repealing and reserving Part 5 of Article 9, relating to electronic recording voting systems, in its entirety.

SECTION 10.
Said chapter is further amended by revising Code Section 21-2-383, relating to preparation and delivery of ballots, form of ballots, casting ballot in person using DRE unit, and casting ballot in person or as absentee using electronic ballot markers, as follows:

“21-2-383. (a) Ballots for use by absentee electors shall be prepared sufficiently in advance by the superintendent and shall be delivered to the board of registrars or absentee ballot clerk as provided in Code Section 21-2-384. Such ballots shall be marked ‘Official Absentee Ballot’ and shall be in substantially the form for ballots required by Article 8 of this chapter; except that in counties using voting machines or direct recording electronic (DRE) units the ballots may be in substantially the form for the ballot labels required by Article 9 of this chapter. Every such ballot shall have printed with other instructions thereon the following: ‘I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.’ The form for either ballot shall be determined and prescribed by the Secretary of State, except in municipal primaries or elections, in which the form of absentee ballots which follows the paper ballot format shall be determined and prescribed by the superintendent.
(b) Notwithstanding any other provision of this Code section, in jurisdictions in which direct recording electronic (DRE) voting systems are used at the polling places on election day, such direct recording electronic (DRE) voting systems shall be used for casting absentee ballots in person at a registrar's or absentee ballot clerk's office or in accordance with Code Section 21-2-382, providing for additional sites.

(e)(b) Notwithstanding any other provision of this Code section to the contrary, in jurisdictions in which electronic ballot markers are used in the polling places on election day, such electronic ballot markers shall be used for casting absentee ballots in person at a registrar's or absentee ballot clerk's office or in accordance with Code Section 21-2-382, providing for additional sites.”

SECTION 11.

Said chapter is further amended by revising subparagraph (a)(1)(C) of Code Section 21-2-386, relating to safekeeping, certification, and validation of absentee ballots; rejection of ballot; delivery of ballots to manager; duties of managers; precinct returns; and notification of challenged elector, as follows:

'(C) If the elector has failed to sign the oath, or if the signature does not appear to be valid and the elector did not provide additional forms of identification as set forth in this subparagraph, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope 'Rejected,' giving the reason therefor. No absentee ballot shall be rejected pursuant to this subparagraph on the grounds that the signature does not appear to be valid if the elector provided a photocopy of one of the forms of identification listed in subsection (a) of Code Section 21-2-417 with the absentee ballot. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years. Such elector shall have until the end of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419 to cure the problem resulting in the rejection of the ballot. The elector may cure a failure to sign the oath, an invalid signature, or missing information by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of one of the forms of identification enumerated in subsection (c) of Code Section 21-2-417 before the close of such period. The affidavit shall affirm that the ballot was submitted by the elector, is the elector's ballot, and that the elector is registered and qualified to vote in the primary, election, or runoff in...
question. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be counted.

SECTION 12.
Said chapter is further amended by revising subsection (c) of Code Section 21-2-408, relating to poll watchers, designation, duties, removal for interference with election, reports by poll watchers of infractions or irregularities, and ineligibility of candidates to serve as poll watchers, as follows:

"(c) In counties or municipalities using direct recording electronic (DRE) voting systems or optical scanning voting systems, each political party may appoint two poll watchers in each primary or election, each political body may appoint two poll watchers in each election, each nonpartisan candidate may appoint one poll watcher in each nonpartisan election, and each independent candidate may appoint one poll watcher in each election to serve in the locations designated by the superintendent within the tabulating center. Such designated locations shall include the check-in area, the computer room, the duplication area, and such other areas as the superintendent may deem necessary to the assurance of fair and honest procedures in the tabulating center. The poll watchers provided for in this subsection shall be appointed and serve in the same manner as other poll watchers."

SECTION 13.
Said chapter is further amended by revising subsection (e) of Code Section 21-2-413, relating to conduct of voters, campaigners, and others at polling places generally, as follows:

"(e) No person shall use photographic or other electronic monitoring or recording devices, cameras, or cellular telephones while such person is in a polling place while voting is taking place; provided, however, that a poll manager, in his or her discretion, may allow the use of photographic devices in the polling place under such conditions and limitations as the election superintendent finds appropriate, and provided, further, that no photography shall be allowed of a ballot or the face of a voting machine or DRE unit or electronic ballot marker while an elector is voting such ballot or machine or DRE unit or using such electronic ballot marker, and no photography shall be allowed of an electors list, electronic electors list, or the use of an electors list or electronic electors list. This subsection shall not prohibit the use of photographic or other electronic monitoring or recording devices, cameras, or cellular telephones by poll officials for official purposes."
SECTION 14.

Said chapter is further amended by revising subsection (h) of Code Section 21-2-418, relating to provisional ballots, as follows:

“(h) Notwithstanding any other provision of this chapter to the contrary, in the event that the voting machines or DRE units at a polling place malfunction and cannot be used to cast ballots or some other emergency situation exists which prevents the use of such equipment to cast votes, provisional ballots may be used by the electors at the polling place to cast their ballots. In such event, the ballots cast by electors whose names appear on the electors list for such polling place shall not be considered provisional ballots and shall not require verification as provided by Code Section 21-2-419; provided, however, that persons whose names do not appear on the electors list for such polling place shall vote provisional ballots which shall be subject to verification under Code Section 21-2-419.”

SECTION 15.

Said chapter is further amended by revising Code Section 21-2-482, relating to absentee ballots for precincts using optical scanning voting equipment, as follows:

“21-2-482. Ballots in a precinct using optical scanning voting equipment for voting by absentee electors shall be prepared sufficiently in advance by the superintendent and shall be delivered to the board of registrars as provided in Code Section 21-2-384. Such ballots shall be marked 'Official Absentee Ballot' and shall be in substantially the form for ballots required by Article 8 of this chapter, except that in counties or municipalities using voting machines, direct recording electronic (DRE) units, or ballot scanners, the ballots may be in substantially the form for the ballot labels required by Article 9 of this chapter or in such form as will allow the ballot to be machine tabulated. Every such ballot shall have printed on the face thereof the following:

'I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.'

The form for either ballot shall be determined and prescribed by the Secretary of State.”

SECTION 16.

Said chapter is further amended by revising paragraph (10) of subsection (a) and subsection (c) of Code Section 21-2-501, relating to number of votes required for election, as follows:

“(10) The run-off primary, special primary runoff, run-off election, or special election runoff shall be a continuation of the primary, special primary, election, or special election
for the particular office concerned. Only except as provided in subsection (c) of Code Section 21-2-152, only the electors who were duly registered to vote and not subsequently deemed disqualified to vote in the primary, special primary, election, or special election for candidates for that particular office shall be entitled to vote therein, and only those votes cast for the persons designated as candidates in such run-off primary, special primary runoff, run-off election, or special election runoff shall be counted in the tabulation and canvass of the votes cast. No elector shall vote in a run-off primary or special primary runoff in violation of Code Section 21-2-224.

"(c) In instances in which no municipal candidate receives a majority of the votes cast and the municipal charter or ordinances do not provide for nomination or election by a plurality vote, a run-off primary or election shall be held between the candidates receiving the two highest numbers of votes. Such runoff shall be held on the twenty-eighth day after the day of holding the first primary or election, unless such run-off date is postponed by court order; provided, however, that, in the case of a runoff from a municipal special election that is held in conjunction with a special election for a federal office and not in conjunction with a general primary or general election, the municipality may conduct such runoff from such municipal special election on the date of the special election runoff for the federal office. Only except as provided in subsection (c) of Code Section 21-2-152, only the electors entitled to vote in the first primary or election shall be entitled to vote in any run-off primary or election resulting therefrom; provided, however, that no elector shall vote in a run-off primary in violation of Code Section 21-2-216. The run-off primary or election shall be a continuation of the first primary or election, and only those votes cast for the candidates receiving the two highest numbers of votes in the first primary or election shall be counted. No write-in votes may be cast in such a primary, run-off primary, or run-off election. If any candidate eligible to be in a runoff withdraws, dies, or is found to be ineligible, the remaining candidates receiving the two highest numbers of votes shall be the candidates in such runoff. The municipal candidate receiving the highest number of the votes cast in such run-off primary or run-off election to fill the nomination or public office sought shall be declared the winner. The municipality shall give written notice to the Secretary of State of such runoff as soon as such municipality certifies the preceding primary, special primary, election, or special election."

SECTION 17.

Said chapter is further amended by revising paragraph (3) of Code Section 21-2-579, relating to fraudulently allowing ballot or voting machine to be seen, casting unofficial ballot, and receiving unauthorized assistance in voting, as follows:
“(3) Without having made the affirmation under oath or declaration required by Code Section 21-2-409, or when the disability which he or she declared at the time of registration no longer exists, permits another to accompany him or her into the voting compartment or voting machine booth or to mark his or her ballot or to register his or her vote on the voting machine or direct recording electronic (DRE) equipment or use an electronic ballot marker; or”

SECTION 18.

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

SECTION 19.

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