

House Bill 659

By: Representatives Roberts of the 52nd, Blackmon of the 146th, Rich of the 97th, Kausche of the 50th, and Clark of the 108th

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 the scanning and publishing on a
3 county website or the Secretary of State's website of paper ballots, unofficial precinct returns,
4 and ballots from recounts; to provide for the inspection and copying of original ballots by
5 certain persons following the completion of a recount; to provide for related matters; to
6 repeal conflicting laws; and for other purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

8 **SECTION 1.**

9 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and
10 elections generally, is amended revising Code Section 21-2-493, relating to computation,
11 canvassing, and tabulation of returns, investigation of discrepancies in vote counts, recount
12 procedure, certification of returns, and change in returns, as follows:

13 "21-2-493.

14 (a) The superintendent shall, at or before 12:00 Noon on the day following the primary or
15 election, at his or her office or at some other convenient public place at the county seat or
16 in the municipality, of which due notice shall have been given as provided by Code

17 Section 21-2-492, publicly commence the computation and canvassing of the returns and
18 continue the same from day to day until completed. For this purpose the superintendent
19 may organize his or her assistants into sections, each of which may simultaneously proceed
20 with the computation and canvassing of the returns from various precincts of the county
21 or municipality in the manner provided by this Code section. Upon the completion of such
22 computation and canvassing, the superintendent shall tabulate the figures for the entire
23 county or municipality and sign, announce, and attest the same, as required by this Code
24 section.

25 (b) The superintendent, before computing the votes cast in any precinct, shall compare the
26 registration figure with the certificates returned by the poll officers showing the number
27 of persons who voted in each precinct or the number of ballots cast. If, upon consideration
28 by the superintendent of the returns and certificates before him or her from any precinct,
29 it shall appear that the total vote returned for any candidate or candidates for the same
30 office or nomination or on any question exceeds the number of electors in such precinct or
31 exceeds the total number of persons who voted in such precinct or the total number of
32 ballots cast therein, such excess shall be deemed a discrepancy and palpable error and shall
33 be investigated by the superintendent; and no votes shall be recorded from such precinct
34 until an investigation shall be had. Such excess shall authorize the summoning of the poll
35 officers to appear immediately with any primary or election papers in their possession. The
36 superintendent shall then examine all the registration and primary or election documents
37 whatever relating to such precinct in the presence of representatives of each party, body,
38 and interested candidate. Such examination may, if the superintendent deems it necessary,
39 include a recount or recanvass of the votes of that precinct and a report of the facts of the
40 case to the district attorney where such action appears to be warranted.

41 (c) In precincts in which paper ballots have been used, the superintendent may require the
42 production of the ballot box and the recount of the ballots contained in such ballot box,
43 either generally or respecting the particular office, nomination, or question as to which the

44 excess exists, in the discretion of the superintendent, and may require the correction of the
45 returns in accordance with the result of such recount. If the ballot box is found to contain
46 more ballots than there are electors registered in such precinct or more ballots than the
47 number of voters who voted in such precinct at such primary or election, the superintendent
48 may, in his or her discretion, exclude the poll of that precinct, either as to all offices,
49 candidates, questions, or parties and bodies or as to any particular offices, candidates,
50 questions, or parties and bodies, as to which such excess exists.

51 (d) In precincts in which voting machines have been used, the superintendent may require
52 a canvass of the votes recorded on the machines used in the precinct, as provided in Code
53 Section 21-2-495.

54 (e) In precincts in which paper ballots have been used, the general returns made by the poll
55 officers from the various precincts shall be read one after another in the usual order, slowly
56 and audibly, by one of the assistants who shall, in each case of a return from a precinct in
57 which ballots were used, read therefrom the number of ballots issued, spoiled, canceled,
58 and cast, respectively, whereupon the assistant having charge of the records of the
59 superintendent showing the number of ballots furnished for each precinct, including the
60 number of stubs and unused ballots and spoiled and canceled ballots returned, shall
61 publicly announce the number of the same respectively; and, unless it appears by such
62 number or calculations therefrom that such records and such general return correspond, no
63 further returns shall be read from the latter until all discrepancies are explained to the
64 satisfaction of the superintendent.

65 (f) In precincts in which voting machines have been used, there shall be read from the
66 general return the identifying number or other designation of each voting machine used and
67 the numbers registered on the protective counter or device on each machine prior to the
68 opening of the polls and immediately after the close of the same, whereupon the assistant
69 having charge of the records of the superintendent showing the number registered on the
70 protective counter or device of each voting machine prior to delivery at the polling place

71 shall publicly announce the numbers so registered; and, unless it appears that such records
72 and such general return correspond, no further returns shall be read from the latter until any
73 and all discrepancies are explained to the satisfaction of the superintendent.

74 (g) In precincts in which paper ballots have been used, when the records agree with such
75 returns regarding the number of ballots and the number of votes recorded for each
76 candidate, such votes for each candidate shall be read by an assistant slowly, audibly, and
77 in an orderly manner from the general return which has been returned unsealed; and the
78 figures announced shall be compared by other assistants with the general return which has
79 been returned sealed. The figures announced for all precincts shall be compared by one of
80 the assistants with the tally papers from the respective precincts. If any discrepancies are
81 discovered, the superintendent shall examine all of the return sheets, tally papers, and other
82 papers in his or her possession relating to the same precinct. If the tally papers and sealed
83 general return sheet agree, the unsealed general return shall be immediately corrected to
84 conform thereto. In every other case the superintendent shall immediately cause the ballot
85 box of the precinct to be opened and the vote therein to be recounted in the presence of
86 interested candidates or their representatives; and, if the recount shall not be sufficient to
87 correct the error, the superintendent may summon the poll officers to appear immediately
88 with all election papers in their possession.

89 (h) In precincts in which voting machines have been used, when the records agree with the
90 returns regarding the number registered on the voting machine, the votes recorded for each
91 candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the
92 general return sheet which has been returned unsealed; and the figures announced shall be
93 compared by other assistants with the duplicate return sheet which has been returned
94 sealed. If the voting machine is of the type equipped with a mechanism for printing paper
95 proof sheets, such general and duplicate return sheets shall also be compared with such
96 proof sheets, which have been returned as aforesaid. If any discrepancies are discovered,
97 the superintendent shall examine all of the return sheets, proof sheets, and other papers in

98 his or her possession relating to the same precinct. Such proof sheets shall be deemed to
99 be prima-facie evidence of the result of the primary or election and to be prima facie
100 accurate; and, if the proper proof sheets, properly identified, shall be mutually consistent
101 and if the general and duplicate returns or either of such returns from such precinct shall
102 not correspond with such proof sheets, they shall be corrected so as to correspond with
103 such proof sheets in the absence of allegation of specific fraud or error proved to the
104 satisfaction of the superintendent.

105 (i) If any error or fraud is discovered, the superintendent shall compute and certify the
106 votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and
107 shall report the facts to the appropriate district attorney for action.

108 (j) The superintendent shall see that the votes shown by each absentee ballot are added to
109 the return received from the precinct of the elector casting such ballot.

110 (j.1) After the closing of the polls and no later than 5:00 P.M. on the Friday following the
111 election, the superintendent shall publish on the county's website the digital images of the
112 scanned paper ballots created by the voting system. If the county does not have the
113 technical capacity to post the images on its website, the superintendent shall transmit the
114 images to the Secretary of State who shall publish such images no later than 9:00 P.M. on
115 the Friday following the election.

116 (k) As the returns from each precinct are read, computed, and found to be correct or
117 corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until
118 all the returns from the various precincts which are entitled to be counted shall have been
119 duly recorded; then they shall be added together, announced, and attested by the assistants
120 who made and computed the entries respectively and shall be signed by the superintendent.
121 The superintendent shall publish, in the same manner as provided for ballot images in
122 subsection (j.1) of this Code section, the unofficial returns from each precinct no later than
123 two days prior to the superintendent's certification of the returns. The consolidated returns
124 shall then be certified by the superintendent in the manner required by this chapter. Such

125 returns shall be certified by the superintendent not later than 5:00 P.M. on the second
126 Friday following the date on which such election was held and such returns shall be
127 immediately transmitted to the Secretary of State; provided, however, that such
128 certification date may be extended by the Secretary of State in his or her discretion if
129 necessary to complete a precertification audit as provided in Code Section 21-2-498.

130 (l) In such case where the results of an election contest change the returns so certified, a
131 corrected return shall be certified and filed by the superintendent which makes such
132 corrections as the court orders."

133 **SECTION 2.**

134 Said chapter is further amended by revising Code Section 21-2-495, relating to procedure for
135 recount or recanvass of votes, losing candidate's right to a recount, and rules and regulations,
136 as follows:

137 "21-2-495.

138 (a) In precincts where paper ballots or scanning ballots have been used, the superintendent
139 may, either of his or her own motion or upon petition of any candidate or political party,
140 order the recount of all the ballots for a particular precinct or precincts for one or more
141 offices in which it shall appear that a discrepancy or error, although not apparent on the
142 face of the returns, has been made. Such recount may be held at any time prior to the
143 certification of the consolidated returns by the superintendent and shall be conducted under
144 the direction of the superintendent. Before making such recount, the superintendent shall
145 give notice in writing to each candidate and to the county or municipal chairperson of each
146 party or body affected by the recount. Each such candidate may be present in person or by
147 representative, and each such party or body may send two representatives to be present at
148 such recount. If upon such recount, it shall appear that the original count by the poll
149 officers was incorrect, such returns and all papers being prepared by the superintendent
150 shall be corrected accordingly.

151 (b) In precincts where voting machines have been used, whenever it appears that there is
152 a discrepancy in the returns recorded for any voting machine or machines or that an error,
153 although not apparent on the face of the returns, exists, the superintendent shall, either of
154 his or her own motion or upon the sworn petition of three electors of any precinct, order
155 a canvass of the votes shown on that particular machine or machines. Such canvass
156 may be conducted at any time prior to the certification of the consolidated returns by the
157 superintendent. In conducting such canvass, the superintendent shall summon the poll
158 officers of the precinct; and such officers, in the presence of the superintendent, shall make
159 a record of the number of the seal upon the voting machine or machines and the number
160 of the protective counter or other device; shall make visible the registering counters of each
161 such machine; and, without unlocking the machine against voting, shall canvass the vote
162 thereon. Before making such canvass, the superintendent shall give notice in writing to
163 the custodian of voting machines, to each candidate, and to the county or municipal
164 chairperson of each party or body affected by the canvass. Each such candidate may be
165 present in person or by representative, and each of such parties or bodies may send two
166 representatives to be present at such canvass. If, upon such canvass, it shall be found
167 that the original canvass of the returns has been correctly made from the machine and that
168 the discrepancy still remains unaccounted for, the superintendent, with the assistance of the
169 custodian, in the presence of the poll officers and the authorized candidates and
170 representatives, shall unlock the voting and counting mechanism of the machine and shall
171 proceed thoroughly to examine and test the machine to determine and reveal the true cause
172 or causes, if any, of the discrepancy in returns from such machine. Each counter shall be
173 reset at zero before it is tested, after which it shall be operated at least 100 times. After the
174 completion of such examination and test, the custodian shall then and there prepare a
175 statement, in writing, giving in detail the result of the examination and test; and such
176 statement shall be witnessed by the persons present and shall be filed with the
177 superintendent. If, upon such canvass, it shall appear that the original canvass of the

178 returns by the poll officers was incorrect, such returns and all papers being prepared by the
179 superintendent shall be corrected accordingly; provided, however, that in the case of
180 returns from any precinct wherein the primary or election was held by the use of a voting
181 machine equipped with a mechanism for printing paper proof sheets, such proof sheets, if
182 mutually consistent, shall be deemed to be prima-facie evidence of the result of the primary
183 or election and to be prima facie accurate; and there shall not be considered to be any
184 discrepancy or error in the returns from any such precinct, such as to require a recanvass
185 of the vote, if all available proof sheets, from the voting machine used therein, identified
186 to the satisfaction of the superintendent and shown to his or her satisfaction to have been
187 produced from proper custody, shall be mutually consistent; and, if the general and
188 duplicate returns, or either of such returns from such precincts shall not correspond with
189 such proof sheets, they and all other papers being prepared by the superintendent shall be
190 corrected so as to correspond with such proof sheets in the absence of allegation of specific
191 fraud or error proved to the satisfaction of the superintendent by the weight of the evidence;
192 and only in such case shall the vote of such precinct be recanvassed under this Code
193 section.

194 (c)(1) Whenever the difference between the number of votes received by a candidate
195 who has been declared nominated for an office in a primary election or who has been
196 declared elected to an office in an election or who has been declared eligible for a run-off
197 primary or election and the number of votes received by any other candidate or
198 candidates not declared so nominated or elected or eligible for a runoff shall be not more
199 than one-half of 1 percent of the total votes which were cast for such office therein, any
200 such candidate or candidates receiving a sufficient number of votes so that the difference
201 between his or her vote and that of a candidate declared nominated, elected, or eligible
202 for a runoff is not more than one-half of 1 percent of the total votes cast, within a period
203 of two business days following the certification of the election results, shall have the right
204 to a recount of the votes cast, if such request is made in writing by the losing candidate.

205 If the office sought is a federal or state office voted upon by the electors of more than one
206 county, the request shall be made to the Secretary of State who shall direct that the
207 recount be performed in all counties in which electors voted for such office and notify the
208 superintendents of the several counties involved of the request. In all other cases, the
209 request shall be made to the superintendent. The superintendent or superintendents shall
210 order a recount of such votes to be made immediately. If, upon such recount, it is
211 determined that the original count was incorrect, the returns and all papers prepared by
212 the superintendent, the superintendents, or the Secretary of State shall be corrected
213 accordingly and the results recertified.

214 (2) Whenever the difference between the number of votes for approval or rejection of a
215 constitutional amendment or binding referendum question shall be not more than one-half
216 of 1 percent of the total votes which were cast on such amendment or question therein,
217 within a period of two business days following the certification of the election results, the
218 Constitutional Amendments Publication Board shall be authorized in its discretion to call
219 for a recount of the votes cast with regard to such amendment or question. In the case of
220 a constitutional amendment or state-wide referendum question or a question voted upon
221 by the electors of more than one county, the board shall direct the Secretary of State to
222 cause a recount to be performed with regard to such amendment or question in all
223 counties involved and notify the superintendents of the recount. In the case of questions
224 voted upon by the electors of only one county or municipality, the board shall direct the
225 Secretary of State to cause a recount to be conducted by the county or municipality
226 involved and the Secretary of State shall notify the superintendent involved of the
227 recount. Upon notification, the superintendent or superintendents shall order a recount
228 of such votes to be made immediately. If, upon such recount, it is determined that the
229 original count was incorrect, the returns and all papers prepared by the superintendent,
230 the superintendents, or the Secretary of State shall be corrected accordingly and the
231 results recertified.

232 (d) Any other provision of this Code section to the contrary notwithstanding, a candidate
233 for a federal or state office voted upon by the electors of more than one county may petition
234 the Secretary of State for a recount or recanvass of votes, as appropriate, when it appears
235 that a discrepancy or error, although not apparent on the face of the returns, has been made.
236 The recount or recanvass may be ordered in the discretion of the Secretary of State in any
237 and all counties in which electors voted for such office, and said recount or recanvass may
238 be held at any time prior to the certification of the consolidated returns by the Secretary of
239 State. A recount or recanvass shall be conducted by the appropriate superintendent or
240 superintendents in the manner and pursuant to the procedures otherwise provided in this
241 Code section for a recount or recanvass, as appropriate. The petition pursuant to this Code
242 section shall be in writing and signed by the person or persons requesting the recount or
243 recanvass. A petition shall set forth the discrepancies or errors and any evidence in support
244 of the petitioner's request for a recount or recanvass and shall be verified. The Secretary
245 of State may require the petitioner or other persons to furnish additional information
246 concerning the apparent discrepancies or errors in the counting or canvassing of votes.

247 (d.1)(1) Upon the completion of a recount, if ballots have been rescanned by optical
248 scanners during the recount, the superintendent shall publish on the county's website the
249 digital images of the scanned paper ballots created by the voting system no later than 24
250 hours after the completion of the recount scanning. If the county does not have the
251 technical capacity to post the images on its website, the superintendent shall transmit the
252 images to the Secretary of State who shall publish such images immediately.

253 (2) Upon the written request of a political party, political body, or candidate whose race
254 is involved in the recount, the superintendent shall permit the inspection and scanning,
255 photographing, or copying of original ballots to begin within one business day of the
256 completion or recertification of the recount. The cost of the inspection and copying shall
257 be the responsibility of the requestor and shall not exceed the actual cost of facilitating

258 the inspection and copying. The requestor may request inspection of some or all of the
259 original ballots in order to confirm the accuracy of the ballot images.
260 (e) The State Election Board shall be authorized to promulgate rules, regulations, and
261 procedures to implement and administer the provisions of this Code section."

262

SECTION 3.

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