

The Senate Committee on Ethics offered the following substitute to SB 40:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to
2 elections and primaries generally, so as to revise the time and method for opening and
3 tabulating absentee ballots; to provide for an effective date; to provide for related matters;
4 to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
8 primaries generally, is amended by revising Code Section 21-2-386, relating to safekeeping,
9 certification, and validation of absentee ballots, rejection of ballot, delivery of ballots to
10 manager, duties of managers, precinct returns, and notification of challenged elector, as
11 follows:

12 "21-2-386.

13 (a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely, unopened,
14 and stored in a manner that will prevent tampering and unauthorized access all official
15 absentee ballots received from absentee electors prior to the closing of the polls on the
16 day of the primary or election except as otherwise provided in this subsection.

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

(C) If the elector has failed to sign the oath, or if the signature does not appear to be valid, 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. 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.

(D) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state by absentee ballot shall include with his or her application for an absentee ballot or in the outer oath envelope of his or her absentee ballot either one of the forms of identification listed in subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not provide any of the forms of identification listed in this subparagraph with his or her application for an absentee ballot or with the absentee ballot, such absentee ballot shall be deemed to be a provisional ballot and such ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subparagraph within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. The board of registrars or absentee ballot clerk shall promptly notify the elector that such ballot is deemed a provisional ballot and shall provide information on the types of identification needed and how and when such identification is to be submitted to the board of registrars or absentee ballot clerk to verify the ballot.

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

(F) All absentee ballots returned to the board or absentee ballot clerk after the closing of the polls on the day of the primary or election shall be safely kept unopened by the board or absentee ballot clerk and then transferred to the appropriate clerk for storage

for the period of time required for the preservation of ballots used at the primary or election and shall then, without being opened, be destroyed in like manner as the used ballots of the primary or election. The board of registrars or absentee ballot clerk shall promptly notify the elector by first-class mail that the elector's ballot was returned too late to be counted and that the elector will not receive credit for voting in the primary or election. All such late absentee ballots shall be delivered to the appropriate clerk and stored as provided in Code Section 21-2-390.

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

(2) ~~Beginning After the opening of the polls on the day of second Monday prior to the~~ primary, election, or runoff, the registrars or absentee ballot clerks shall ~~be authorized to~~ open the outer absentee ballot envelope on which is printed the oath of the elector in such a manner as not to destroy the oath printed thereon; ~~provided, however, that the registrars or absentee ballot clerk shall not be authorized to~~ and remove the contents of such outer envelope ~~or to~~ and open the inner envelope marked 'Official Absentee Ballot;' ~~except and~~ tabulate the ballot as otherwise provided in this Code section. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present

before commencing; and three persons who are registrars, deputy registrars, or absentee ballot clerks shall be present at all times while the ~~outer envelopes~~ absentee ballots are being opened and scanned. ~~After opening the outer envelopes, the ballots shall be safely and securely stored until the time for tabulating such ballots.~~

(3) ~~A county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff open the inner envelopes in accordance with the procedures prescribed in this subsection and begin tabulating the absentee ballots. If the county election superintendent chooses to open the inner envelopes and begin tabulating such ballots prior to the close of the polls on the day of the primary, election, or runoff, the superintendent shall notify in writing, at least seven days prior to the primary, election, or runoff, the Secretary of State of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls. The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election in such county shall have the right to designate two persons to act as monitors, and each independent and nonpartisan candidate whose name appears on the ballot for such election in such county shall have the right to designate one person to act as monitors as a monitor for such process the process of opening and scanning the absentee ballots. In the event that the only issue to be voted upon in an election is a referendum question, the superintendent shall also notify in writing the chief judge of the superior court of the county on or before the third Monday prior to such election who shall appoint two electors of the county to monitor such process.~~

(4) ~~The county election superintendent shall publish a written notice in the superintendent's office of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls and publish such notice at least one week prior to the primary, election, or runoff in the legal organ of the county~~ Reserved.

(5) The process for opening the inner envelopes of and tabulating absentee ballots beginning on the day of second Monday prior to a primary, election, or runoff as provided in this subsection shall be a confidential process to maintain the secrecy of all ballots and to protect the disclosure of any balloting information before 7:00 P.M. on election day. ~~No absentee ballots shall be tabulated before 7:00 A.M. on the day of a primary, election, or runoff.~~

(6) ~~None of the~~ All persons conducting the tabulation of absentee ballots ~~during the day of a primary, election, or runoff~~, including the vote review panel required by Code Section 21-2-483, and ~~all monitors and observers shall be sequestered until the time for the closing of the polls. All such persons shall have no contact with the news media; shall have no contact with other persons not involved in monitoring, observing, or conducting the tabulation; shall not use any type of communication device including radios, telephones, and cellular telephones; shall not utilize computers for the purpose of e-mail, instant messaging, or other forms of communication; and no monitors or observers shall not~~ communicate any information concerning the tabulation until the time for the closing of the polls; provided, however, that supervisory and technical assistance personnel shall be permitted to ~~enter and leave the area in which~~ perform any necessary duties while the tabulation is being conducted but shall not communicate any information concerning the tabulation to anyone other than the county election superintendent; the staff of the superintendent; those persons conducting, observing, or monitoring the tabulation; and those persons whose technical assistance is needed for the tabulation process to operate.

(7) The absentee ballots shall be tabulated in accordance with the procedures of this chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be placed into locked ballot boxes and may be transferred to locked ballot bags, if needed, for security. The persons conducting the tabulation of the absentee ballots shall not cause

the tabulating equipment to produce any count, partial or otherwise, of the absentee votes cast until the time for the closing of the polls.

(b) When requested by the superintendent but not earlier than the second Monday prior to a primary, election, or runoff, ~~As soon as practicable after 7:00 A.M. on the day of the primary, election, or runoff, in precincts other than those in which optical scanning tabulators are used~~ a registrar or absentee ballot clerk shall deliver the official absentee ballot of each certified absentee elector, each rejected absentee ballot, applications for such ballots, and copies of the numbered lists of certified and rejected absentee electors to the ~~manager in charge of the absentee ballot precinct of the county or municipality, which shall be located in the precincts containing the county courthouse or polling place designated by the municipal superintendent. In those precincts in which optical scanning tabulators are used, such absentee ballots shall be taken to the tabulation center or other place~~ location designated by the superintendent, and the superintendent or official receiving such absentee ballots and materials shall issue his or her receipt therefor. ~~Except as otherwise provided in this Code section, in no event shall the counting of the ballots begin before the polls close.~~

(c) The superintendent shall cause the certified absentee ballots to be opened and tabulated as provided in this Code section. A ~~Except as otherwise provided in this Code section, after the close of the polls on the day of the primary, election, or runoff, a manager shall then open the outer envelope~~ of the absentee ballot in such manner as not to destroy the oath printed thereon and shall deposit the inner envelope containing the absentee ballot marked 'Official Absentee Ballot' in a ballot box reserved for absentee ballots. In the event that an outer envelope is found to contain an absentee ballot that is not in an inner envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person sealing the inner envelope, and deposited in the ballot box and counted in the same manner as other absentee ballots, provided that such ballot is otherwise proper. A ~~Such~~ manager with two assistant managers, appointed by the superintendent, with such clerks as the

manager deems necessary shall count the absentee ballots following the procedures prescribed by this chapter for other ballots, insofar as practicable, ~~and prepare an election return for the county or municipality showing the results of the absentee ballots cast in such county or municipality.~~

(d) All absentee ballots shall be counted and tabulated in such a manner that returns may be reported by precinct; and separate returns shall be made for each precinct in which absentee ballots were cast showing the results by each precinct in which the electors reside.

(e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall write 'Challenged,' the elector's name, and the alleged cause of challenge on the outer envelope and shall deposit the ballot in a secure, sealed ballot box; and it shall be counted as other challenged ballots are counted. Where direct recording electronic voting systems are used for absentee balloting and a challenge to an elector's right to vote is made prior to the time that the elector votes, the elector shall vote on a paper or optical scanning ballot and such ballot shall be handled as provided in this subsection. The board of registrars or absentee ballot clerk shall promptly notify the elector of such challenge.

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

SECTION 2.

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

SECTION 3.

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