

House Bill 17

By: Representatives Powell of the 33rd, Leverett of the 123rd, DeLoach of the 167th, Smith of the 18th, Jasperse of the 11th, and others

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 sealing of ballots in secure
3 containers; to provide for chain of custody documentation and procedures; to provide for
4 related matters; to provide for an effective date; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and
9 elections generally, is amended by revising subsection (c) of Code Section 21-2-382, relating
10 to additional buildings as additional registrar's office or place of registration for receiving
11 absentee ballots and for advance voting and drop boxes, as follows:

12 "(c)(1) A board of registrars or absentee ballot clerk shall establish at least one drop box
13 as a means for absentee by mail electors to deliver their ballots to the board of registrars
14 or absentee ballot clerk. A board of registrars or absentee ballot clerk may establish
15 additional drop boxes, subject to the limitations of this Code section, but may only
16 establish additional drop boxes totaling the lesser of either one drop box for

every 100,000 active registered voters in the county or the number of advance voting locations in the county. Any additional drop boxes shall be evenly geographically distributed by population in the county. Drop boxes established pursuant to this Code section shall be established at the office of the board of registrars or absentee ballot clerk or inside locations at which advance voting, as set forth in subsection (d) of Code Section 21-2-385, is conducted in the applicable primary, election, or runoff and may be open during the hours of advance voting at that location. Such drop boxes shall be ~~closed~~ locked when advance voting is not being conducted at that location. All drop boxes shall be ~~closed~~ locked when the advance voting period ends, as set forth in subsection (d) of Code Section 21-2-385. The drop box location shall have adequate lighting and be under constant surveillance by an election official or his or her designee, law enforcement official, or licensed security guard. During an emergency declared by the Governor pursuant to Code Section 38-3-51, drop boxes may be located outside the office of the board of registrars or absentee ballot clerk or outside of locations at which advance voting is taking place, subject to the other limitations of this Code section.

(2) The opening slot of a drop box shall not allow ballots to be tampered with or removed and shall be designed to minimize the ability for liquid or other substances that may damage ballots to be poured into the drop box. A drop box shall be labeled "OFFICIAL ABSENTEE BALLOT DROP BOX" and shall clearly display the signage developed by the Secretary of State pertaining to Georgia law with regard to who is allowed to return absentee ballots and destroying, defacing, or delaying delivery of ballots.

(3) The board of registrars or absentee ballot clerk shall arrange for the collecting and return of ballots deposited at each drop box at the conclusion of each day where advance voting takes place. Collection of ballots from a drop box shall be made by a team of at least two people. Any person collecting ballots from a drop box shall have sworn an oath in the same form as the oath for poll officers set forth in Code Section 21-2-95. The

collection team shall complete and sign a ballot transfer form as specified by the Secretary of State upon removing the ballots from the drop box which shall include the date, time, location, number of ballots, confirmation that the drop box was locked after the removal of the ballots, and the identity of each person collecting the ballots. The ballot transfer form shall also serve as an initial chain of custody document on which each person who takes possession of the ballots shall sign for such ballots. The ballots shall be placed in a locked transfer case upon being removed from the drop box. Such cases shall be sealed with a numbered seal, the number of which shall be recorded on a ballot transfer form which shall be signed by the collection team. The collection team shall then immediately transfer the ballots to the board of registrars or absentee ballot clerk, who shall process and store the ballots in the same manner as absentee ballots returned by mail are processed and stored. The board of registrars, absentee ballot clerk, or a designee of the board of registrars or absentee ballot clerk shall verify that the seal on the transfer case has not been broken or otherwise tampered with or compromised, and shall sign the ballot transfer form upon receipt of the ballots from the collection team and shall include the date and time of signature and verification as provided for under this provision. Such form shall be considered a public record pursuant to Code Section 50-18-70.

(4) At the beginning of voting at each advance location where a drop box is present, the manager of the advance voting location shall open the drop box and confirm on the reconciliation form for that advance voting location that the drop box is empty. If the drop box is not empty, the manager shall secure the contents of the drop box and immediately inform the election superintendent, board of registrars, or absentee ballot clerk, who shall inform the Secretary of State."

SECTION 2.

Said chapter is further amended by revising Code Section 21-2-386, relating to safekeeping, certification, and validation of absentee ballots, rejection of ballot, delivery of ballots to location designated by superintendent, duties of superintendent and managers, precinct returns, report of returns of verified and accepted absentee ballots cast as soon as possible following closing of polls, notification of challenged elector, and unlawful disclosure of tabulation results, as follows:

"21-2-386.

(a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely, unopened, and stored in a manner that will prevent tampering and unauthorized access to and shall document the chain of custody of all official absentee ballots received from absentee electors prior to the closing of the polls on the 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 number of the elector's Georgia driver's license number or state identification card issued pursuant to Article 5 of Chapter 5 of Title 40 and date of birth entered on the absentee ballot envelope with the same information contained in the elector's voter registration records. If the elector has affirmed on the envelope that he or she does not have a Georgia driver's license or state identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the registrar or clerk shall compare the last four digits of the elector's social security number and date of birth entered on the envelope with the same information contained in the elector's voter registration records. The registrar or clerk shall also confirm that the elector signed the oath and the person assisting the elector, if any, signed the required oath. If the elector has signed the elector's oath, the person assisting has signed the required oath, if applicable, and the identifying information entered on the absentee ballot envelope matches the same information contained in the

elector's voter registration record, the registrar or clerk shall 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. All accepted absentee ballots shall be securely stored in a sealed container that will prevent tampering or unauthorized access prior to the scanning such ballots.

(C) If the elector has failed to sign the oath, or if the identifying information entered on the absentee ballot envelope does not match the same information appearing in the elector's voter registration record, 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, nonmatching identifying information, 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

122 ballot shall include with his or her application for an absentee ballot or in the outer oath
123 envelope of his or her absentee ballot either one of the forms of identification listed in
124 subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank
125 statement, government check, paycheck, or other government document that shows the
126 name and address of such elector. If such elector does not provide any of the forms of
127 identification listed in this subparagraph with his or her application for an absentee
128 ballot or with the absentee ballot, such absentee ballot shall be deemed to be a
129 provisional ballot and such ballot shall only be counted if the registrars are able to
130 verify current and valid identification of the elector as provided in this subparagraph
131 within the time period for verifying provisional ballots pursuant to Code
132 Section 21-2-419. The board of registrars or absentee ballot clerk shall promptly notify
133 the elector that such ballot is deemed a provisional ballot and shall provide information
134 on the types of identification needed and how and when such identification is to be
135 submitted to the board of registrars or absentee ballot clerk to verify the ballot.

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

142 (F) All absentee ballots returned to the board or absentee ballot clerk after the closing
143 of the polls on the day of the primary or election shall be safely kept unopened by the
144 board or absentee ballot clerk and then transferred to the appropriate clerk with the
145 chain of custody documents provided for in subparagraph (a)(1)(A) of this Code section
146 for storage in a manner that will prevent tampering for the period of time required for
147 the preservation of ballots used at the primary or election and shall then, without being
148 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)(A) Beginning at 8:00 A.M. on the third Monday prior to the day of the primary, election, or runoff, the election superintendent shall be authorized to open the outer oath envelope of absentee ballots that have been verified and accepted pursuant to subparagraph (a)(1)(B) of this Code section, remove the contents of such outer envelope, open the inner envelope marked 'Official Absentee Ballot,' and scan the absentee ballot using one or more ballot scanners. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks ~~must~~ shall be present before commencing; and three persons who are registrars, deputy registrars, or absentee ballot clerks shall be present at all times while the sealed containers containing verified and accepted absentee ballots are unsealed and verified for integrity, while the absentee

176 ballot envelopes are ~~being~~ opened, and while the absentee ballots are ~~being~~ scanned.
177 However, no person shall tally, tabulate, estimate, or attempt to tally, tabulate, or
178 estimate or cause the ballot scanner or any other equipment to produce any tally or
179 tabulate, partial or otherwise, of the absentee ballots cast until the time for the closing
180 of the polls on the day of the primary, election, or runoff except as provided in this
181 Code section. Prior to beginning the process set forth in this paragraph, the
182 superintendent shall provide written notice to the Secretary of State in writing at least
183 seven days prior to processing and scanning absentee ballots. Such notice shall contain
184 the dates, start and end times, and location or locations where absentee ballots will be
185 processed and scanned. The superintendent shall also post such notice publicly in a
186 prominent location in the superintendent's office and on the home page of the county
187 election superintendent's website, if the county election superintendent maintains such
188 a website. The Secretary of State shall publish on his or her website the information
189 he or she receives from superintendents stating the dates, times, and locations where
190 absentee ballots will be processed.

191 (B) The proceedings set forth in this paragraph shall be open to the view of the public,
192 but no person except one employed and designated by the superintendent shall touch
193 any ballot or ballot container. Any person involved in processing and scanning
194 absentee ballots shall swear an oath, in the same form as the oath for poll officers
195 provided in Code Section 21-2-95, prior to beginning the processing and scanning of
196 absentee ballots. The county executive committee or, if there is no organized county
197 executive committee, the state executive committee of each political party and political
198 body having candidates whose names appear on the ballot for such election shall have
199 the right to designate two persons and each independent and nonpartisan candidate
200 whose name appears on the ballot for such election shall have the right to designate one
201 person to act as monitors for such process. In the event that the only issue to be voted
202 upon in an election is a referendum question, the superintendent shall also notify in

203 writing the chief judge of the superior court of the county who shall appoint two
204 electors of the county to monitor such process. While viewing or monitoring the
205 process set forth in this paragraph, monitors and observers shall be prohibited from:

- 206 (i) In any way interfering with the processing or scanning of absentee ballots or the
207 conduct of the election;
- 208 (ii) Using or bringing into the room any photographic or other electronic monitoring
209 or recording devices, cellular telephones, or computers;
- 210 (iii) Engaging in any form of campaigning or campaign activity;
- 211 (iv) Taking any action that endangers the secrecy and security of the ballots;
- 212 (v) Touching any ballot or ballot container;
- 213 (vi) Tallying, tabulating, estimating, or attempting to tally, tabulate, or estimate,
214 whether partial or otherwise, any of the votes on the absentee ballots cast; and
- 215 (vii) Communicating any information that they see while monitoring the processing
216 and scanning of the absentee ballots, whether intentionally or inadvertently, about any
217 ballot, vote, or selection to anyone other than an election official who needs such
218 information to lawfully carry out his or her official duties.

219 (C) The State Election Board shall promulgate rules requiring reconciliation
220 procedures; prompt and undelayed scanning of ballots after absentee ballot envelopes
221 are opened; secrecy of election results prior to the closing of the polls on the day of a
222 primary, election, or runoff; and other protections to protect the integrity of the process
223 set forth in this paragraph.

224 (D) At the conclusion of the scanning of ballots, such scanned ballots shall be stored
225 in tamper-resistant containers sealed with numbered seals, the number of which shall
226 be recorded on the chain of custody document specified by the Secretary of State, and
227 such forms shall be signed by the person storing the ballots and the date and time of
228 storage shall be entered on such forms.

(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 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 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 for such process. 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 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.

(5) The process for opening absentee ballot envelopes, scanning absentee ballots, and tabulating absentee ballots on the day of a primary, election, or runoff as provided in this subsection shall be conducted in a manner 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) 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 email, instant messaging, or other forms of communication; and 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 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. Such boxes or bags shall be sealed and witnessed and verified by each person taking custody of such items by each such person's signature and date and time of taking custody. 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 except as otherwise provided in this Code section.

(b) When requested by the superintendent, but not earlier than the third Monday prior to a primary, election, or runoff, 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 location designated by the superintendent in secure, sealed containers with the chain of custody documents as specified by the Secretary of State and the signature and date and time of the person taking custody, and the superintendent or official receiving such absentee ballots shall issue his or her receipt therefor.

(c) The superintendent shall cause the verified and accepted absentee ballots to be opened and tabulated as provided in this Code section. A manager shall then open the outer envelope in such manner as not to destroy the oath printed thereon and shall deposit the inner envelope marked 'Official Absentee Ballot' in a secure, sealed ballot box reserved for absentee ballots with an accompanying chain of custody documentation. 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. 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.

(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. The superintendent shall utilize the procedures set forth in this Code section to ensure that the returns of verified and accepted absentee ballots cast are reported to the public as soon as possible following the closing of the polls on the day of the primary, election, or runoff. Failure to utilize these procedures to ensure that the returns of verified and accepted absentee ballots are reported as soon as possible following the close of polls shall subject the superintendent to sanctions by the State Election Board. If a superintendent fails to report the returns of verified and accepted absentee ballots by the day following the

election at 5:00 P.M., the State Election Board may convene an independent performance review board pursuant to Code Section 21-2-107.

(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 for which there shall be a chain of custody document as specified by the Secretary of State on which is recorded and witnessed the name and signature of each person taking custody of such ballots; 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 3.

Said chapter is further amended by revising subsection (a) of Code Section 21-2-419, relating to validation of provisional ballots and reporting to Secretary of State, as follows:

"(a) A person shall cast a provisional ballot on the same type of ballot that is utilized by the county or municipality. Such provisional ballot shall be sealed in double envelopes as provided in Code Section 21-2-384 and shall be deposited by the person casting such ballot in a secure, sealed ballot box for which the number of the seal shall be recorded and witnessed on a chain of custody document as specified by the Secretary of State and the name and signature of the person or persons having custody of such ballots shall also be

334 documented on such form. Such form shall remain with such ballots until such ballots are
335 destroyed in accordance with law."

336 **SECTION 4.**

337 Said chapter is further amended by revising subsection (a) of Code Section 21-2-420, relating
338 to procedure for counting and tabulation of votes, and by adding a new subsection to read as
339 follows:

340 "(a) After the time for the closing of the polls and the last elector voting, the poll officials
341 in each precinct shall complete the required accounting and related documentation for the
342 precinct and shall advise the election superintendent of the total number of ballots cast at
343 such precinct and the total number of provisional ballots cast. The chief manager and at
344 least one assistant manager shall post a copy of the tabulated results for the precinct on the
345 door of the precinct and then immediately deliver all required documentation and election
346 materials to the election superintendent in sealed containers accompanied by chain of
347 custody documentation on which are recorded and witnessed the names and signatures of
348 each person having custody of such ballots. The Upon receipt of such ballots, the election
349 superintendent shall verify that the containers are sealed and contain the appropriate chain
350 of custody documentation. The election superintendent shall then ensure that such ballots
351 are processed, counted, and tabulated as soon as possible and shall not cease such count
352 and tabulation until all such ballots are counted and tabulated."

353 "(c) No ballots shall be handled without a poll official being present and without
354 documentation on the chain of custody documentation of who is handling such ballots and
355 when and why such ballots are being handled. After the activity requiring the handling of
356 ballots is completed, such ballots shall be resealed in ballot boxes or other secure
357 containers with numbered seals, the numbers of which shall be recorded and witnessed on
358 chain of custody documentation as specified by the Secretary of State and shall be signed

359 by the persons having custody of such ballots. Such chain of custody documentation shall
360 remain with the ballots until such ballots are destroyed in accordance with law."

361 **SECTION 5.**

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

364 **SECTION 6.**

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