

_____ offers the following
substitute to SB 89:

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 qualifications of members of
3 performance review boards; to provide for ballots and ballot labels to be securely stored in
4 locked or sealed containers; to provide for construction; to provide for time off for employees
5 to vote; to revise provisions related to the retention and preservation of ballots and other
6 election documents; to remove provisions for keeping such ballots and documents under seal;
7 to provide for document inspection upon certification of election results; to amend Article
8 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to general
9 provisions regarding the Georgia Bureau of Investigation, so as to provide the Georgia
10 Bureau of Investigation with original jurisdiction to investigate election fraud and election
11 crimes; to provide the Georgia Bureau of Investigation with subpoena power to further such
12 investigations; to provide for penalty; to provide for related matters; to provide an effective
13 date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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SECTION 1.

Said chapter is further amended in Code Section 21-2-106, relating to performance review of local election official, role of performance review board, and findings as grounds for removal, by revising subsection (a) as follows:

“(a) The following officials may request that a performance review of a local election official be conducted:

- (1) The governing authority of the same jurisdiction as the local election official;
- (2) For counties represented by more than three members of the Georgia House of Representatives and Georgia Senate, at least two members of the Georgia House of Representatives and two members of the Georgia Senate who represent the county; and
- (3) For counties represented by fewer than four members of the Georgia House of Representatives and Georgia Senate, at least one member of the Georgia House of Representatives and one member of the Georgia Senate who represent the county.

Such request shall be transmitted to the State Election Board which shall appoint an independent performance review board within 30 days after receiving such resolution. The State Election Board shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the elections division of the Secretary of State and two of whom shall be local election officials; or members of a county board of elections or county board of elections and registration, provided that no such appointee shall be a local election official or member of a county board of elections or county board of elections and registration for the county or municipality, as applicable, under review.”

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SECTION 2.

Said chapter is further amended by revising Code Section 21-2-283, relating to printing and safekeeping of ballots and labels by superintendent, as follows:

40 "21-2-283.
41 In any primary or election, the superintendent or municipal governing authority shall cause
42 all the ballots and ballot labels to be printed accurately and in the form prescribed by this
43 chapter and securely stored in sealed or locked containers which are accompanied by chain
44 of custody forms provided by the State Election Board, and the superintendent or municipal
45 governing authority shall be responsible for the safekeeping of the same while in his or her
46 or its possession or that of his or her or its agent. The superintendent or municipal
47 governing authority shall keep a record of the number of official ballots printed and
48 furnished to each precinct at each primary and election and the number of stubs, unused
49 ballots, and canceled ballots subsequently returned therefrom."

50 **SECTION 3.**

51 Said chapter is further amended by revising Code Section 21-2-404, relating to affording
52 employees time off to vote, as follows:

53 "21-2-404.
54 Each employee in this state shall, upon reasonable notice to his or her employer, be
55 permitted by his or her employer to take any necessary time off from his or her employment
56 to vote in any municipal, county, state, or federal political party primary or election for
57 which such employee is qualified and registered to vote either on one of the day days that
58 are designated for advance in-person voting or the day on which such primary or election
59 is held; provided, however, that such necessary time off shall not exceed two hours; and
60 provided, further, that, if the hours of work of such employee commence at least two hours
61 after the opening of the polls or end at least two hours prior to the closing of the polls, then
62 the time off for voting as provided for in this Code section shall not be available. The
63 employer may specify the hours during which the employee may absent himself or herself
64 as provided in this Code section."

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SECTION 4.

Said chapter is further amended by revising Code Section 21-2-496, relating to preparation and filing by superintendent of four copies of consolidated return of primary, electronic filing, and superintendent to furnish final copy of each ballot used for primary, as follows:

"21-2-496.

(a) Each county and municipal superintendent shall prepare four copies of the consolidated return of the primary to be certified by the superintendent on forms furnished by the Secretary of State, such consolidated returns to be filed immediately upon certification as follows:

(1) One copy to be posted at the office of the election superintendent for the information of the public;

(2) One copy to be filed in the superintendent's office;

(3) One copy to be forwarded to the Secretary of State together with a copy of each precinct return, the numbered list of voters of each precinct, and the returns and the numbered list of voters for absentee electors; and

(4) One copy to be ~~sealed and~~ filed with the clerk of the superior court, in the case of a county election, or with the city clerk, in the case of a municipal election, as required by Code Section 21-2-500.

(b) The Secretary of State is authorized to provide a method by which the election superintendent can file the results of primaries and elections electronically. Once the Secretary of State provides such a method of filing, the election superintendent shall file a copy of the election returns electronically in the manner prescribed by the Secretary of State in addition to the filing provided in subsection (a) of this Code section. The Secretary of State is authorized to promulgate such rules and regulations as necessary to provide for such an electronic filing.

90 (c) Each county and municipal superintendent shall, upon certification, furnish to the
91 Secretary of State in a manner determined by the Secretary of State a final copy of each
92 ballot used for such primary."

93 **SECTION 5.**

94 Said chapter is further amended by revising Code Section 21-2-497, relating to preparation
95 and filing by superintendent of four copies of consolidated return of elections, and
96 superintendent to furnish final copy of each ballot used for election, as follows:

97 "21-2-497.

98 (a) Each county and municipal superintendent shall prepare four copies of the consolidated
99 return of the election to be certified by the superintendent on forms furnished by the
100 Secretary of State, such consolidated returns to be filed immediately upon certification as
101 follows:

102 (1) One copy to be posted at the office of the election superintendent for the information
103 of the public;

104 (2) One copy to be filed and recorded as a permanent record in the minutes of the
105 superintendent's office;

106 (3) One copy to be ~~sealed and~~ filed with the clerk of the superior court, in the case of a
107 county election, or with the city clerk, in the case of a municipal election, as required by
108 Code Section 21-2-500; and

109 (4) One copy to be returned immediately to the Secretary of State unless required as
110 follows:

111 (A) In the case of election of federal and state officers, a separate return showing totals
112 of the votes cast for each of such officers respectively shall be forwarded by the
113 superintendent to the Secretary of State on forms furnished by the Secretary of State;

- 114 (B) In the case of referendum elections provided for by an Act of the General
115 Assembly, the returns shall immediately be certified by the authority holding such
116 election to the Secretary of State, along with the precinct returns and numbered list of
117 voters for each precinct. In addition thereto, the official citation of the Act involved
118 and the purpose of such election shall be sent to the Secretary of State at the same time.
119 The Secretary of State shall maintain a permanent record of such certifications;
- 120 (C) In the case of elections on constitutional amendments, the returns shall be certified
121 immediately to the Secretary of State. Upon receiving the certified returns from the
122 various superintendents, the Secretary of State shall immediately proceed to canvass
123 and tabulate the votes cast on such amendments and certify the results to the Governor;
124 and
- 125 (D) In the case of election for presidential electors, a separate return shall be prepared
126 by each superintendent and certified immediately to the Secretary of State.
- 127 (b) Each county and municipal superintendent shall, upon certification, furnish to the
128 Secretary of State in a manner determined by the Secretary of State a final copy of each
129 ballot used for such election."

130 **SECTION 6.**

131 Said chapter is further amended by revising Code Section 21-2-500, relating to delivery of
132 voting materials, presentation to grand jury in certain cases, preservation and destruction, and
133 destruction of unused ballots, as follows:

134 "21-2-500.

- 135 (a) Immediately upon completing the returns required by this article, in the case of
136 elections other than municipal elections, the superintendent shall deliver in sealed
137 containers to the clerk of the superior court or, if designated by the clerk of the superior
138 court, to the county records manager or other office or officer under the jurisdiction of a

139 county governing authority which maintains or is responsible for records, as provided in
140 Code Section 50-18-99, the used and void ballots and the stubs of all ballots used; one copy
141 of the oaths of poll officers; and one copy of each numbered list of voters, tally paper,
142 voting machine paper proof sheet, and return sheet involved in the primary or election. In
143 addition, the superintendent shall deliver copies of the voting machine ballot labels,
144 computer chips containing ballot tabulation programs, copies of computer records of ballot
145 design, and similar items or an electronic record of the program by which votes are to be
146 recorded or tabulated, which is captured prior to the election, and which is stored on some
147 alternative medium such as a CD-ROM or floppy disk simultaneously with the
148 programming of the PROM or other memory storage device. The clerk, county records
149 manager, or the office or officer designated by the clerk shall ~~hold~~ retain and preserve such
150 ballots and other documents for at least 24 months ~~under seal, unless otherwise directed by~~
151 ~~the superior court,~~ in a manner so as to prevent such ballots or other documents from being
152 altered, amended, damaged, modified, or mutilated, after which time they shall be
153 presented to the grand jury for inspection at its next meeting. Such ballots and other
154 documents shall be retained and preserved in the office of the clerk, county records
155 manager, or officer designated by the clerk until the adjournment of such grand jury, and
156 then they may be destroyed, unless otherwise provided by order of the superior court.

157 (a.1) Upon certification of all matters on the ballot in a particular election, all such
158 documents from such election shall be subject to inspection pursuant to Code
159 Section 21-2-72.

160 (b) The superintendent shall retain all unused ballots for 30 days after the election or
161 primary and, if no challenge or contest is filed prior to or during that period that could
162 require future use of such ballots, may thereafter destroy such unused ballots. If a
163 challenge or contest is filed during that period that could require the use of such ballots,

164 they shall be retained until the final disposition of the challenge or contest and, if remaining
165 unused, may thereafter be destroyed.

166 (c) Immediately upon completing the returns required by this article, the municipal
167 superintendent shall deliver in sealed containers to the city clerk the used and void ballots
168 and the stubs of all ballots used; one copy of the oaths of poll officers; and one copy of
169 each numbered list of voters, tally paper, voting machine paper proof sheet, and return
170 sheet involved in the primary or election. In addition, the municipal superintendent shall
171 deliver copies of the voting machine ballot labels, computer chips containing ballot
172 tabulation programs, copies of computer records of ballot design, and similar items or an
173 electronic record of the program by which votes are to be recorded or tabulated, which
174 is captured prior to the election, and which is stored on some alternative medium such as
175 a CD-ROM or floppy disk simultaneously with the programming of the PROM or other
176 memory storage device. Such ballots and other documents shall be retained and
177 preserved under seal in the office of the city clerk for at least 24 months; and then they
178 may be destroyed unless otherwise provided by order of the mayor and council if a
179 contest has been filed or by court order, provided that the electors list, voter's certificates,
180 and duplicate oaths of assisted electors shall be immediately returned by the
181 superintendent to the county registrar."

182 **SECTION 7.**

183 Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
184 general provisions regarding the Georgia Bureau of Investigation, is amended in Code
185 Section 35-3-4, relating to powers and duties of bureau generally, by revising subsection (a)
186 as follows:

187 "(a) It shall be the duty of the bureau to:

- 188 (1) Take, receive, and forward fingerprints, photographs, descriptions, and measurements
189 of persons in cooperation with the bureaus and departments of other states and of the
190 United States;
- 191 (2) Exchange information relating to crime and criminals;
- 192 (3) Keep permanent files and records of such information procured or received;
- 193 (4) Provide for the scientific investigation of articles used in committing crimes or
194 articles, fingerprints, or bloodstains found at the scene of a crime;
- 195 (5) Provide for the testing and identification of weapons and projectiles fired therefrom;
- 196 (6) Acquire, collect, classify, and preserve any information which would assist in the
197 identification of any deceased individual who has not been identified after the discovery
198 of such deceased individual;
- 199 (7) Acquire, collect, classify, and preserve immediately any information which would
200 assist in the location of any missing person, including any minor, and provide
201 confirmation as to any entry for such a person to the parent, legal guardian, or next of kin
202 of that person and the bureau shall acquire, collect, classify, and preserve such
203 information from such parent, guardian, or next of kin;
- 204 (8) Exchange such records and information as provided in paragraphs (6) and (7) of this
205 subsection with, and for the official use of, authorized officials of the federal government,
206 the states, cities, counties, and penal and other institutions. With respect to missing
207 minors, such information shall be transmitted immediately to other law enforcement
208 agencies;
- 209 (9) Identify and investigate violations of Article 4 of Chapter 7 of Title 16;
- 210 (10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16,
211 relating to offenses related to minors;
- 212 (11) Identify and investigate violations of Article 8 of Chapter 9 of Title 16;
- 213 (12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16;

- 214 (13) Identify and investigate violations of Code Section 16-5-46;
- 215 (14) Identify and investigate violations of Article 8 of Chapter 5 of Title 16;
- 216 (15)(A) Upon request, provide to the board an analysis of criminal history record
- 217 information to assist the board in determining a sexual offender's risk assessment
- 218 classification in accordance with the board's duties as specified in Code
- 219 Section 42-1-14.
- 220 (B) As used in this paragraph, the term:
- 221 (I) 'Board' means the Sexual Offender Registration Review Board.
- 222 (ii) 'Criminal history record information' has the same meaning as set forth in Code
- 223 Section 35-3-30.
- 224 (iii) 'Risk assessment classification' means the level into which a sexual offender is
- 225 placed based on the board's assessment.
- 226 (iv) 'Sexual offender' has the same meaning as set forth in Code Section 42-1-12; ~~and~~
- 227 (16) Identify and investigate violations of Chapter 2 of Title 21 involving elections
- 228 which if established are sufficient to change or place in doubt the results of an election;
- 229 and
- 230 ~~(16)~~(17) Attorneys employed by the Legal Division of the bureau may serve at the
- 231 request of a district attorney, solicitor-general, or United States Attorney in the
- 232 prosecution of any civil or criminal case within the jurisdiction of such district attorney,
- 233 solicitor-general, or United States Attorney and, while providing such assistance to such
- 234 district attorney, solicitor-general, or United States Attorney, such attorneys shall have
- 235 the same authority and power as an attorney employed by such district attorney,
- 236 solicitor-general, or United States Attorney."

237 **SECTION 8.**

238 Said article is further amended by adding a new Code section to read as follows:

239 "35-3-4.5.
240 (a) In any investigation of a violation of Chapter 2 of Title 21 involving elections, the
241 director, assistant director, or deputy director for investigations shall be authorized to issue
242 a subpoena, with the consent of the Attorney General, to compel the production of books,
243 papers, documents, or other tangible items, including records and documents contained
244 within or generated by a computer or any other electronic device, unless such records are
245 wholly owned by the federal government and to undertake, at the discretion of the bureau,
246 an audit of materials produced in response to such subpoena in a form deemed necessary
247 by the bureau.
248 (b) Upon failure of a person without lawful excuse to obey a subpoena, the director,
249 assistant director, or deputy director for investigations, through the prosecuting attorney,
250 may apply to a superior court having jurisdiction for an order compelling compliance.
251 Such person may object to the subpoena on the grounds that it fails to comply with this
252 Code section or upon any constitutional or other legal right or privilege of such person.
253 The court may issue an order modifying or setting aside such subpoena or directing
254 compliance with the original subpoena. Failure to obey a subpoena issued under this Code
255 section may be punished by the court as contempt of court."

256 **SECTION 9.**

257 This Act shall become effective on July 1, 2022.

258 **SECTION 10.**

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