

_____ 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 the securing of unused security paper; to provide
5 for rules and regulations; to provide for construction; to provide for time off for employees
6 to vote; to revise provisions related to the retention and preservation of ballots and other
7 election documents; to remove provisions for keeping such ballots and documents under seal;
8 to provide for document inspection upon certification of election results; to amend Article
9 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to general
10 provisions regarding the Georgia Bureau of Investigation, so as to provide the Georgia
11 Bureau of Investigation with original jurisdiction to investigate election fraud and election
12 crimes; to provide the Georgia Bureau of Investigation with subpoena power to further such
13 investigations; to provide for penalty; to provide for related matters; to provide an effective
14 date; to repeal conflicting laws; and for other purposes.

15 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."

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:

41 "21-2-283.

42 (a) In any primary or election, the superintendent or municipal governing authority shall
 43 cause all the ballots and ballot labels to be printed accurately and in the form prescribed by
 44 this chapter and securely stored in sealed or locked containers which are accompanied by
 45 ballot transfer forms signed by at least two individuals so as to serve as an integrated chain
 46 of custody; such forms shall be provided by the State Election Board, and the
 47 superintendent or municipal governing authority shall be responsible for the safekeeping
 48 of the same while in his or her or its possession or that of his or her or its agent. The
 49 superintendent or municipal governing authority shall keep a record of the number of
 50 official ballots printed and furnished to each precinct at each primary and election and the
 51 number of stubs, unused ballots, and canceled ballots subsequently returned therefrom.
 52 (b) The State Election Board shall promulgate rules and regulations governing the securing
 53 and chain of custody of unused security paper."

54 **SECTION 3.**

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

57 "21-2-404.

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

67 The employer may specify the hours during which the employee may absent himself or
68 herself as provided in this Code section."

69 **SECTION 4.**

70 Said chapter is further amended by revising Code Section 21-2-496, relating to preparation
71 and filing by superintendent of four copies of consolidated return of primary, electronic
72 filing, and superintendent to furnish final copy of each ballot used for primary, as follows:
73 "21-2-496.

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

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

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

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

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

87 (b) The Secretary of State is authorized to provide a method by which the election
88 superintendent can file the results of primaries and elections electronically. Once the
89 Secretary of State provides such a method of filing, the election superintendent shall file
90 a copy of the election returns electronically in the manner prescribed by the Secretary of
91 State in addition to the filing provided in subsection (a) of this Code section. The Secretary

92 of State is authorized to promulgate such rules and regulations as necessary to provide for
 93 such an electronic filing.

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

97 **SECTION 5.**

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

101 "21-2-497.

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

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

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

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

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

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

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

134 **SECTION 6.**

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

138 "21-2-500.

- 139 (a) Immediately upon completing the returns required by this article, in the case of
 140 elections other than municipal elections, the superintendent shall deliver in sealed
 141 containers to the clerk of the superior court or, if designated by the clerk of the superior
 142 court, to the county records manager or other office or officer under the jurisdiction of a
 143 county governing authority which maintains or is responsible for records, as provided in

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

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

164 (b) The superintendent shall retain all unused ballots for 30 days after the election or
165 primary and, if no challenge or contest is filed prior to or during that period that could
166 require future use of such ballots, may thereafter destroy such unused ballots. If a
167 challenge or contest is filed during that period that could require the use of such ballots,
168 they shall be retained until the final disposition of the challenge or contest and, if remaining
169 unused, may thereafter be destroyed.

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

186 **SECTION 7.**

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

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

- 192 (1) Take, receive, and forward fingerprints, photographs, descriptions, and measurements
193 of persons in cooperation with the bureaus and departments of other states and of the
194 United States;
- 195 (2) Exchange information relating to crime and criminals;

- 196 (3) Keep permanent files and records of such information procured or received;
- 197 (4) Provide for the scientific investigation of articles used in committing crimes or
198 articles, fingerprints, or bloodstains found at the scene of a crime;
- 199 (5) Provide for the testing and identification of weapons and projectiles fired therefrom;
- 200 (6) Acquire, collect, classify, and preserve any information which would assist in the
201 identification of any deceased individual who has not been identified after the discovery
202 of such deceased individual;
- 203 (7) Acquire, collect, classify, and preserve immediately any information which would
204 assist in the location of any missing person, including any minor, and provide
205 confirmation as to any entry for such a person to the parent, legal guardian, or next of kin
206 of that person and the bureau shall acquire, collect, classify, and preserve such
207 information from such parent, guardian, or next of kin;
- 208 (8) Exchange such records and information as provided in paragraphs (6) and (7) of this
209 subsection with, and for the official use of, authorized officials of the federal government,
210 the states, cities, counties, and penal and other institutions. With respect to missing
211 minors, such information shall be transmitted immediately to other law enforcement
212 agencies;
- 213 (9) Identify and investigate violations of Article 4 of Chapter 7 of Title 16;
- 214 (10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16,
215 relating to offenses related to minors;
- 216 (11) Identify and investigate violations of Article 8 of Chapter 9 of Title 16;
- 217 (12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16;
- 218 (13) Identify and investigate violations of Code Section 16-5-46;
- 219 (14) Identify and investigate violations of Article 8 of Chapter 5 of Title 16;
- 220 (15)(A) Upon request, provide to the board an analysis of criminal history record
221 information to assist the board in determining a sexual offender's risk assessment

222 classification in accordance with the board's duties as specified in Code Section 42-1-14.

223 (B) As used in this paragraph, the term:

224 (I) 'Board' means the Sexual Offender Registration Review Board.

225 (ii) 'Criminal history record information' has the same meaning as set forth in Code
226 Section 35-3-30.

227 (iii) 'Risk assessment classification' means the level into which a sexual offender is
228 placed based on the board's assessment.

229 (iv) 'Sexual offender' has the same meaning as set forth in Code Section 42-1-12; and

230 (16) Identify and investigate violations of Chapter 2 of Title 21 involving elections
231 which if established are sufficient to change or place in doubt the results of an election;
232 and

233 ~~(16)~~(17) Attorneys employed by the Legal Division of the bureau may serve at the
234 request of a district attorney, solicitor-general, or United States Attorney in the
235 prosecution of any civil or criminal case within the jurisdiction of such district attorney,
236 solicitor-general, or United States Attorney and, while providing such assistance to such
237 district attorney, solicitor-general, or United States Attorney, such attorneys shall have
238 the same authority and power as an attorney employed by such district attorney,
239 solicitor-general, or United States Attorney."

240 SECTION 8.

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

242 "35-3-4.5.

243 (a) In any investigation of a violation of Chapter 2 of Title 21 involving elections, the
244 director, assistant director, or deputy director for investigations shall be authorized to issue
245 a subpoena, with the consent of the Attorney General, to compel the production of books,
246 papers, documents, or other tangible items, including records and documents contained
247 within or generated by a computer or any other electronic device, unless such records are

248 wholly owned by the federal government and to undertake, at the discretion of the bureau,
249 an audit of materials produced in response to such subpoena in a form deemed necessary
250 by the bureau.

251 (b) Upon failure of a person without lawful excuse to obey a subpoena, the director,
252 assistant director, or deputy director for investigations, through the prosecuting attorney,
253 may apply to a superior court having jurisdiction for an order compelling compliance.
254 Such person may object to the subpoena on the grounds that it fails to comply with this
255 Code section or upon any constitutional or other legal right or privilege of such person.
256 The court may issue an order modifying or setting aside such subpoena or directing
257 compliance with the original subpoena. Failure to obey a subpoena issued under this Code
258 section may be punished by the court as contempt of court."

259 **SECTION 9.**

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

261 **SECTION 10.**

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