

The House Committee on Governmental Affairs offers the following substitute to HB 426:

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 provisions related to the retention and
3 preservation of ballots and other election documents; to remove provisions for keeping such
4 ballots and documents under seal; to provide for rulemaking regarding public inspection of
5 ballots; to repeal conflicting laws; and for other 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 elections and
9 primaries generally, is amended by revising Code Section 21-2-496, relating to preparation
10 and filing by superintendent of four copies of consolidated return of primary, electronic
11 filing, and superintendent to furnish final copy of each ballot used for primary, as follows:
12 "21-2-496.

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

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- 17 (1) One copy to be posted at the office of the election superintendent for the information
18 of the public;
- 19 (2) One copy to be filed in the superintendent's office;
- 20 (3) One copy to be forwarded to the Secretary of State together with a copy of each
21 precinct return, the numbered list of voters of each precinct, and the returns and the
22 numbered list of voters for absentee electors; and
- 23 (4) One copy to be ~~sealed and~~ filed with the clerk of the superior court, in the case of a
24 county election, or with the city clerk, in the case of a municipal election, as required by
25 Code Section 21-2-500.
- 26 (b) The Secretary of State is authorized to provide a method by which the election
27 superintendent can file the results of primaries and elections electronically. Once the
28 Secretary of State provides such a method of filing, the election superintendent shall file
29 a copy of the election returns electronically in the manner prescribed by the Secretary of
30 State in addition to the filing provided in subsection (a) of this Code section. The Secretary
31 of State is authorized to promulgate such rules and regulations as necessary to provide for
32 such an electronic filing.
- 33 (c) Each county and municipal superintendent shall, upon certification, furnish to the
34 Secretary of State in a manner determined by the Secretary of State a final copy of each
35 ballot used for such primary."

36

SECTION 2.

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

40 "21-2-497.

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

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

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

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

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

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

57 (B) In the case of referendum elections provided for by an Act of the General
58 Assembly, the returns shall immediately be certified by the authority holding such
59 election to the Secretary of State, along with the precinct returns and numbered list of
60 voters for each precinct. In addition thereto, the official citation of the Act involved
61 and the purpose of such election shall be sent to the Secretary of State at the same time.
62 The Secretary of State shall maintain a permanent record of such certifications;

63 (C) In the case of elections on constitutional amendments, the returns shall be certified
64 immediately to the Secretary of State. Upon receiving the certified returns from the
65 various superintendents, the Secretary of State shall immediately proceed to canvass

66 and tabulate the votes cast on such amendments and certify the results to the Governor;
67 and
68 (D) In the case of election for presidential electors, a separate return shall be prepared
69 by each superintendent and certified immediately to the Secretary of State.
70 (b) Each county and municipal superintendent shall, upon certification, furnish to the
71 Secretary of State in a manner determined by the Secretary of State a final copy of each
72 ballot used for such election."

73 **SECTION 3.**

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

77 "21-2-500.

78 (a) Immediately upon completing the returns required by this article, in the case of
79 elections other than municipal elections, the superintendent shall deliver in sealed
80 containers to the clerk of the superior court or, if designated by the clerk of the superior
81 court, to the county records manager or other office or officer under the jurisdiction of a
82 county governing authority which maintains or is responsible for records, as provided in
83 Code Section 50-18-99, the used and void ballots and the stubs of all ballots used; one copy
84 of the oaths of poll officers; and one copy of each numbered list of voters, tally paper,
85 voting machine paper proof sheet, and return sheet involved in the primary or election. In
86 addition, the superintendent shall deliver copies of the voting machine ballot labels,
87 computer chips containing ballot tabulation programs, copies of computer records of ballot
88 design, and similar items or an electronic record of the program by which votes are to be
89 recorded or tabulated, which is captured prior to the election, and which is stored on some
90 alternative medium such as a CD-ROM or floppy disk simultaneously with the
91 programming of the PROM or other memory storage device. The clerk, county records

92 manager, or the office or officer designated by the clerk shall ~~hold~~ retain and preserve such
93 ballots and other documents for at least 24 months ~~under seal, unless otherwise directed by~~
94 ~~the superior court,~~ in a manner so as to prevent such ballots or other documents from being
95 altered, amended, damaged, modified, or mutilated, including during any public inspection
96 of such ballots, after which time they shall be presented to the grand jury for inspection at
97 its next meeting. Such ballots and other documents shall be retained and preserved in the
98 office of the clerk, county records manager, or officer designated by the clerk until the
99 adjournment of such grand jury, and then they may be destroyed, unless otherwise provided
100 by order of the superior court. Ballots, numbered lists of voters, and oaths of poll officers
101 retained pursuant to this Code section shall be subject to public inspection after initial
102 certification of the relevant election by the local election superintendent subject to the rules
103 and regulations promulgated by the State Election Board.

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

110 (c) Immediately upon completing the returns required by this article, the municipal
111 superintendent shall deliver in sealed containers to the city clerk the used and void ballots
112 and the stubs of all ballots used; one copy of the oaths of poll officers; and one copy of
113 each numbered list of voters, tally paper, voting machine paper proof sheet, and return
114 sheet involved in the primary or election. In addition, the municipal superintendent shall
115 deliver copies of the voting machine ballot labels, computer chips containing ballot
116 tabulation programs, copies of computer records of ballot design, and similar items or an
117 electronic record of the program by which votes are to be recorded or tabulated, which is
118 captured prior to the election, and which is stored on some alternative medium such as a

119 CD-ROM or floppy disk simultaneously with the programming of the PROM or other
120 memory storage device. Such ballots and other documents shall be retained and preserved
121 ~~under seal~~ in the office of the city clerk for at least 24 months; and then they may be
122 destroyed unless otherwise provided by order of the mayor and council if a contest has
123 been filed or by court order, provided that the electors list, voter's certificates, and duplicate
124 oaths of assisted electors shall be immediately returned by the superintendent to the county
125 registrar.

126 (d) Within 90 days of the effective date of this subsection, the State Election Board shall
127 promulgate rules and regulations providing for access for visual reviews of original ballots,
128 copying ballots, and the costs of such record retrieval, inspection, and copying services.
129 Such rules and regulations shall include, but not necessarily be limited to, provisions
130 regarding:

131 (1) The methods to be used to provide such services at the lowest reasonable cost;

132 (2) Appropriate quality of copies made pursuant to this Code section;

133 (3) Timeliness of responses and productions made pursuant to this Code section; and

134 (4) Strict safeguards for the physical security of such ballots in a manner that restricts the
135 handling of voted ballots during such inspection to the official custodian of such records
136 or the designee of such custodian."

137 **SECTION 4.**

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