

The House Committee on Governmental Affairs offers the following substitute to SB 129:

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 revise provisions related to performance review  
3 boards; to revise the language that must be used on absentee ballot applications distributed  
4 by persons or entities; to provide for time off for employees to advance vote; to revise  
5 provisions related to time off for employees to vote on election day; to revise the latest  
6 reporting time for required election night reporting; to mandate audits following all  
7 state-wide primaries, elections, or runoffs; to provide for related matters; to repeal conflicting  
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and  
12 elections generally, is amended by revising subsection (a) of Code Section 21-2-106, relating  
13 to performance review of local election official, role of performance review board, and  
14 findings as grounds for removal, as follows:

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

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- 17 (1) The governing authority of the same jurisdiction as the local election official;
- 18 (2) For counties represented by more than three members of the Georgia House of  
19 Representatives and Georgia Senate, at least two members of the Georgia House of  
20 Representatives and two members of the Georgia Senate who represent the county; and
- 21 (3) For counties represented by fewer than four members of the Georgia House of  
22 Representatives and Georgia Senate, at least one member of the Georgia House of  
23 Representatives and one member of the Georgia Senate who represent the county.
- 24 Such request shall be transmitted to the State Election Board which shall appoint an  
25 independent performance review board within 30 days after receiving such resolution. The  
26 State Election Board shall appoint three competent persons to serve as members of the  
27 performance review board, one of whom shall be an employee of the elections division of  
28 the Secretary of State and two of whom shall be local election officials or members of a  
29 county board of elections or county board of elections and registration, provided that no  
30 such appointee shall be a local election official or member of a county board of elections  
31 or county board of elections and registration for the county or municipality, as applicable,  
32 under review."

## 33 SECTION 2.

34 Said chapter is further amended by revising subparagraph (a)(1)(C) of Code  
35 Section 21-2-381, relating to making of application for absentee ballot, determination of  
36 eligibility by ballot clerk, furnishing of applications to colleges and universities, and persons  
37 entitled to make application, as follows:

38 "(C)(i) Any person applying for an absentee-by-mail ballot shall make application in  
39 writing on the form made available by the Secretary of State. In order to confirm the  
40 identity of the voter, such form shall require the elector to provide his or her name,  
41 date of birth, address as registered, address where the elector wishes the ballot to be  
42 mailed, and the number of his or her Georgia driver's license or identification card

43 issued pursuant to Article 5 of Chapter 5 of Title 40. If such elector does not have a  
44 Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5  
45 of Title 40, the elector shall affirm this fact in the manner prescribed in the application  
46 and the elector shall provide a copy of a form of identification listed in subsection (c)  
47 of Code Section 21-2-417. The form made available by the Secretary of State shall  
48 include a space to affix a photocopy or electronic image of such identification. The  
49 Secretary of State shall develop a method to allow secure electronic transmission of  
50 such form. The application shall also include the identity of the primary, election, or  
51 runoff in which the elector wishes to vote; the name and relationship of the person  
52 requesting the ballot if other than the elector; and an oath for the elector or relative to  
53 write his or her usual signature with a pen and ink affirming that the elector is a  
54 qualified Georgia elector and the facts presented on the application are true.  
55 Submitting false information on an application for an absentee ballot shall be a  
56 violation of Code Sections 21-2-560 and 21-2-571.

57 (ii) A blank application for an absentee ballot shall be made available online by the  
58 Secretary of State and each election superintendent and registrar, but neither the  
59 Secretary of State, election superintendent, board of registrars, other governmental  
60 entity, nor employee or agent thereof shall send absentee ballot applications directly  
61 to any elector except upon request of such elector or a relative authorized to request  
62 an absentee ballot for such elector. No person or entity other than a relative  
63 authorized to request an absentee ballot for such elector or a person signing as  
64 assisting an illiterate or physically disabled elector shall send any elector an absentee  
65 ballot application that is prefilled with the elector's required information set forth in  
66 this subparagraph. No person or entity other than the elector, a relative authorized to  
67 request an absentee ballot for such elector, a person signing as assisting an illiterate  
68 or physically disabled elector with his or her application, a common carrier charged  
69 with returning the ballot application, an absentee ballot clerk, a registrar, or a law

70 enforcement officer in the course of an investigation shall handle or return an elector's  
 71 completed absentee ballot application. Handling a completed absentee ballot  
 72 application by any person or entity other than as allowed in this subsection shall be  
 73 a misdemeanor. Any application for an absentee ballot sent to any elector by any  
 74 person or entity shall utilize the form of the application made available by the  
 75 Secretary of State and shall clearly and prominently disclose on the face of the form:

76 ~~'This is NOT an official government publication and was NOT provided to you~~  
 77 ~~by any governmental entity and this is NOT a ballot. It is being distributed by~~  
 78 ~~[insert name and address of person, organization, or other entity distributing such~~  
 79 ~~document or material]~~

80 This application is being distributed by [insert name and address of person,  
 81 organization, or other entity distributing such document or material], not by any  
 82 government agency or any state or local election office. THIS IS NOT A  
 83 BALLOT.'

84 (iii) The disclaimer required by division (ii) of this subparagraph shall be:

85 (I) Of sufficient font size to be clearly readable by the recipient of the  
 86 communication;

87 (II) ~~Be contained~~ Contained in a printed box set apart from the other contents of the  
 88 communication; and

89 (III) ~~Be printed~~ Printed with a reasonable degree of color contrast between the  
 90 background and the printed disclaimer."

91 **SECTION 3.**

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

94 "21-2-404.

95 Each employee in this state shall, upon reasonable notice to his or her employer, be  
 96 permitted by his or her employer to take any necessary time off from his or her  
 97 employment to vote in any municipal, county, state, or federal political party primary or  
 98 election for which such employee is qualified and registered to vote either on one of the  
 99 days that are designated for advance in-person voting or on the day on which such primary  
 100 or election is held; provided, however, that such necessary time off shall not exceed two  
 101 hours; and provided, further, that, if the hours of work of such employee commence at least  
 102 two hours after the opening of the polls or end at least two hours prior to the closing of the  
 103 polls, then the time off for voting as provided for in this Code section shall not be available.  
 104 The employer may specify the hours during which the employee may absent himself or  
 105 herself as provided in this Code section."

#### 106 SECTION 4.

107 Said chapter is further amended by revising Code Section 21-2-421, relating to posting of  
 108 required information after closing of polls and reporting to Secretary of State, as follows:

109 "21-2-421.

110 (a) As soon as possible but not later than ~~10:00~~ 11:59 P.M. following the close of the polls  
 111 on the day of a primary, election, or runoff, the election superintendent shall report to the  
 112 Secretary of State and post in a prominent public place the following information:

113 (1) The number of ballots cast at the polls on the day of the primary, election, or runoff,  
 114 including provisional ballots cast;

115 (2) The number of ballots cast at advance voting locations during the advance voting  
 116 period for the primary, election, or runoff; and

117 (3) The total number of absentee ballots returned to the board of registrars by the  
 118 deadline to receive such absentee ballots on the day of the primary, election, or runoff.

119 (b) Upon the completion of the report provided for in subsection (a) of this Code section,  
 120 the election superintendent shall compare the total number of ballots received as reported  
 121 in subsection (a) of this Code section and the counting of the ballots in the primary,  
 122 election, or runoff minus any rejected and uncured absentee ballots, uncounted provisional  
 123 ballots, and any other uncounted ballots, with the total number of ballots cast in the  
 124 primary, election, or runoff. The results of such comparison and all explanatory materials  
 125 shall be reported to the Secretary of State. The reason for any discrepancy shall be fully  
 126 investigated and reported to the Secretary of State."

### 127 SECTION 5.

128 Said chapter is further amended by revising Code Section 21-2-498, relating to  
 129 precertification tabulation audits, as follows:

130 "21-2-498.

131 (a) As used in this Code section, the term:

132 (1) 'Incorrect outcome' ~~is when~~ means the winner of a contest or the answer to a  
 133 proposed constitutional amendment or question would be different from the results found  
 134 in a manual recount of paper official ballots.

135 (2) 'Risk limit' means the largest statistical probability that an incorrect outcome is not  
 136 detected or corrected in a risk-limiting audit.

137 (3) 'Risk-limiting audit' means an audit protocol that makes use of statistical methods and  
 138 is designed to limit to acceptable levels the risk of certifying a preliminary election  
 139 outcome that constitutes an incorrect outcome.

140 (b) ~~As soon as possible, but no later than the November, 2020, general election, the local~~  
 141 Local election superintendents shall conduct precertification tabulation or risk-limiting  
 142 audits on one contest following any election, special election, election runoff, special  
 143 election runoff, primary, special primary, primary runoff, or special primary runoff for any  
 144 with federal or state general election state-wide contests in accordance with requirements

145 set forth by rule or regulation of the State Election Board. Audits performed under this  
146 Code section shall be conducted by manual inspection of random samples of the paper  
147 official ballots.

148 (c) In conducting each audit, the local election superintendents shall:

149 (1) Complete the audit prior to final certification of the contest;

150 (2) Ensure that all types of ballots are included in the audit, whether cast in person, by  
151 absentee ballot, advance voting, provisional ballot, or otherwise;

152 (3) Provide a report of the unofficial final tabulated vote results for the contest to the  
153 public prior to conducting the audit;

154 (4) Complete the audit in public view; and

155 (5) Provide details of the audit to the public within 48 hours of completion.

156 (d) The State Election Board shall be authorized to promulgate rules, regulations, and  
157 procedures to implement and administer the provisions of this Code section. The  
158 procedures prescribed by the State Election Board shall include security procedures to  
159 ensure that collection of validly cast ballots is complete, accurate, and trustworthy  
160 throughout the audit.

161 ~~(e) The Secretary of State shall conduct a risk-limiting audit pilot program with a risk limit  
162 of not greater than 10 percent in one or more counties by December 31, 2021. The  
163 Secretary of State shall review the results of the pilot program and, within 90 days  
164 following the election in which such pilot program is used, shall provide the members of  
165 the General Assembly with a comprehensive report, including a plan on how to implement  
166 risk-limiting audits state wide. If such risk-limiting audit is successful in achieving the  
167 specified confidence level within five business days following the election for which it was  
168 conducted, then all audits performed pursuant to this Code section shall be similarly  
169 conducted, beginning not later than November 1, 2024."~~

170

**SECTION 6.**

171

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