

SENATE BILL 463¹: PRIMARIES AND ELECTIONS; PROVISIONS AND REFERENCES REGARDING DIRECT RECORDING ELECTRONIC VOTING MACHINES; REMOVE

Amending O.C.G.A. §§ 21-2-92(a), 22-152(c), 22-381(a), and 22-409.2; and Repealing All Laws in Conflict with the Same

First signature: Senator John Kennedy (18th)

Co-Sponsors: Senator Mike Dugan (30th), Senator Steve Gooch (31st), Senator Burt Jones (25th), Senator Jeff Mullis (53rd), Representative Shaw Blackmon (146th)

Summary: “Senate Bill 463 requires poll officers to be residents of the state of Georgia. The bill sets the registration deadline for a run-off primary on the fifth Monday prior to the date of the run-off. The bill prohibits the secretary of state, State Election Board, county registrar, or other specified officials from distributing unsolicited absentee ballots to electors. The secretary of state is authorized to develop a secure website for electors to request absentee ballots. Upon request, electors 70 years and older must be permitted to vote immediately at the next available voting booth without having to wait in line.”²

Status: House Withdrawn, Recommitted on June 25, 2020.³

TEXT OF SENATE BILL 463 (COMMITTEE SUBSTITUTE LC 47 0605S)⁴

To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, so as to revise the qualifications of poll officers; to provide for the deadline for registering to vote in certain runoffs; to prohibit the unsolicited distribution of absentee ballot applications to electors; to provide for the creation of a secure state-wide absentee ballot application website; to provide for priority in voting for senior citizens and disabled voters; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, is amended by revising subsection (a) of Code Section 21-2-92, relating to qualifications of poll officers, service during municipal election or primary, and Student Teen Election Participant (STEP) program, as follows:

¹ S.B. 463, 155th Gen. Assemb., 2nd Reg. Sess. (Ga. 2020), available at <http://www.legis.ga.gov/Legislation/20192020/194640.pdf>.

² H. BUDGET & RSCH. OFF., S.B. 463 REPORT, GA. GEN. ASSEMB. 155, 2nd Reg. Sess. (2020) (on file with author).

³ 2019-2020 Regular Session-SB 463, *Primaries and Elections; provisions and references regarding direct recording voting machines, remove*, GA. GEN. ASSEMB., <http://www.legis.ga.gov/Legislation/en-US/display/20192020/SB/463> (last visited May 12, 2021) [hereinafter S.B. 463 Status Sheet].

⁴ S.B. 463.

“(a) Poll officers appointed pursuant to Code Sections 21-2-90 and 21-2-91 shall be judicious, intelligent, and upright citizens of the United States, residents of ~~or otherwise employed by the county in which they are appointed or, in the case of municipal elections, residents of or otherwise employed by the municipality in which the election is to be held or of the county in which that municipality is located~~ the State of Georgia, 16 years of age or over, and shall be able to read, write, and speak the English language. No poll officer shall be eligible for any nomination for public office or to be voted for at a primary or election at which the poll officer shall serve. No person who is otherwise holding public office, other than a political party office, shall be eligible to be appointed as or to serve as a poll officer. A parent, spouse, child, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of a candidate shall not be eligible to serve as a poll officer in any precinct in which such candidate's name appears on the ballot in any primary or election.”

SECTION 2.

Said chapter is further amended by revising subsection (c) of Code Section 21-2-152, relating to conduct of primaries generally and run-off primary, as follows:

“(c) A run-off primary shall be a continuation of the primary ~~and only persons who were entitled to vote in the primary shall be entitled to vote therein;~~ and only those votes cast for the persons designated for the runoff shall be counted in the tabulation and canvass of the votes cast. Any elector who votes in the primary of one party shall not be eligible to vote in a primary runoff of any other party other than a primary runoff of the party in whose primary such elector voted. The deadline for persons to apply to register to vote before a run-off primary or any primary, election, or runoff held in conjunction with such run-off primary shall be the close of business on the fifth Monday prior to the date of such run-off primary or, if such Monday is a legal holiday, by the close of business on the following business day.”

SECTION 3.

Said chapter is further amended in Code Section 21-2-381, relating to making of application for absentee ballot, determination of eligibility by ballot clerk, furnishing of applications to colleges and universities, and persons entitled to make application, by revising paragraph (3) of and adding a new paragraph to subsection (a) as follows:

“(3) ~~Reserved~~ The Secretary of State, the State Election Board, a county registrar, the governing authority of a municipality, an absentee ballot clerk, or any other designated official performing the duties set forth in this article shall not distribute or send unsolicited absentee ballot applications to electors.”

“(5) The Secretary of State, in coordination with the State Board of Elections, shall, before July 1, 2021, develop a secure website that will allow any elector of the state to apply online for an absentee ballot as otherwise provided by this article. Such website shall be designed to verify the identity of such applicants and shall forward all such valid applications to the relevant county registrar, municipal governing authority, or absentee ballot clerk.”

SECTION 4.

Said chapter is further amended by revising Code Section 21-2-409.1, relating to voting by electors who are 75 years of age or older or disabled electors without having to wait in line, as follows:

“21-2-409.1.

On election day between the hours of 9:30 A.M. and 4:30 P.M., each elector who is ~~75~~ 70 years of age or older or who is disabled and requires assistance in voting as authorized by Code Section 21-2-409, shall, upon request to a poll officer, be authorized at any primary or election to vote immediately at the next available voting compartment or booth without having to wait in line. Notice of the provisions of this Code section shall be prominently displayed in the voting place.”

SECTION 5.

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

SECTION 6.

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

SPONSOR’S RATIONALE

Many Georgia residents faced problems while voting in Georgia’s primary elections on June 9, 2020, such as long lines at voting locations and technology issues with polling equipment.⁵ Secretary of State Brad Raffensperger asked lawmakers in the Georgia House of Representatives to consider Senate Bill 463 (“the Bill”) in an effort to prevent future election issues that could confuse voters.⁶ Thus, the members of the House Governmental Affairs Committee (“the Committee”), debated the bills implications.⁷ After debating the issue, the Committee considered and adopted a substitute bill, sponsored by Representative and Chairman of the House Governmental Affairs Committee Shaw Blackmon (“Representative Blackmon”), at a hearing on June 24, 2020 by a majority.⁸

During this committee hearing, the committee members agreed that Georgia had a shortage of poll workers, that long lines during the primary election affected elderly voters, and that the current Covid-19 pandemic complicated the voting process.⁹ Additionally, at this hearing, O.C.G.A. §§ 21-2-92(a), 2-381, and 2-409.1 were amended in sections 1, 4, and 3 of S.B. 463, respectively, to prevent future voting issues during elections.¹⁰

⁵ Mark Niese, *Elections Officials Grilled Over Lines and Problems in Georgia’s Primary*, THE ATLANTA JOURNAL CONSTITUTION (Jun. 26, 2020), <https://www.AJC.com/news/state--regional-govt--politics/ELECTION-OFFICIALS-GRILLED-OVER-LINES-AND-PROBLEMS-GEORGIA-PRIMARY/ShcyPo2D7kaByOymzFITu/>.

⁶ *Id.*

⁷ *Id.*

⁸ *Primaries and Elections: Hearing on S.B. 463 Before the H. Comm. on Governmental Affs.*, 155th Gen. Assemb., 2nd Reg. Sess., Day 38 (Ga. 2020) [hereinafter *Hearing*] (statement of Shaw Blackmon), <https://livestream.com/accounts/25225474/events/8737124/videos/207858522>.

⁹ *Id.*

¹⁰ *Id.*

First, the Committee voted to amend O.C.G.A. § 21-2-92(a) as found in Section 1 of the Bill in order to help alleviate a shortage of poll workers on election day by allowing any Georgia resident to work at any polling station.¹¹ Additionally, Representative Sam Teasley, on behalf of Secretary of State Brad Raffensperger, spoke in support of the Bill and reiterated that the Secretary of State had friends who could not work at a polling location at their church, because they were not residents of the county where they attend church as required under Georgia law.¹² Additionally, the Political Director for the American Civil Liberties Union (“the ACLU”), in Georgia, Mr. Christopher Bruce, agreed that Section 1 would help alleviate Georgia’s election problems if Georgia residents could work at any polling location.¹³

Next, Representative Bee Nguyen put forth a motion to amend O.C.G.A. § 21-2-409.1 as found in Section 4 of the Bill that would lower the age required to be able to move to the front of the line at a polling location from 75 years of age to 70 years of age.¹⁴ She stated that this would help Georgia’s senior citizens by providing them with relief so they would not have to stand in line to vote for several hours.¹⁵ Representative Nguyen stated that some polling lines in her district of DeKalb county were three to four hours long.¹⁶ The House Governmental Affairs Committee voted in favor of adding this amendment.¹⁷

Finally, Representative Blackmon motioned the Committee to vote to amend O.C.G.A. § 21-2-381(a)(3) (Section 3 of the Bill) that would forbid the secretary of state and other state government election officials from sending unsolicited absentee ballots to registered voters and would require the secretary of state to create an online website that would allow voters to apply for absentee ballots.¹⁸ During the committee meeting, Representative Blackmon stated that sending unsolicited applications to vote absentee would “actually create some problems in our counties” because it would overwhelm local election offices by “flood[ing]” them with paperwork.¹⁹ He also supported this amendment on the ground that preventing local officials from mailing absentee voting applications would ensure uniformity across the state.²⁰ Representative Blackmon made it clear that this amendment to Section 3 would “not in anyway prevent anyone from asking for an absentee ballot or voting absentee” and reminded the committee that Georgia voters can still vote early.²¹ Additionally, Representative Rick Williams stated that in the event of a state of emergency, “the governor can direct the secretary of state . . . to send out the application for the absentee ballot” even if this amendment and bill were to become law.²²

OPPOSITION’S RATIONALE

House Minority Leader Robert Trammell voiced opposition to Section 3 of Senate Bill 463, which prohibits most state officials from sending unsolicited absentee ballot applications to

¹¹ *Id.*

¹² *Id.* (statement of Sam Teasley, Representative, on behalf of Secretary of State Brad Raffensperger).

¹³ *Id.* (statement of Christopher Bruce, Political Director, American Civil Liberties Union of Ga.).

¹⁴ *Id.* (statement of Bee Nguyen, Member, H. Comm. on Governmental Affs.).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* (statement of Shaw Blackmon, Chairman, H. Comm. on Governmental Affs.).

¹⁹ *Id.*; see also Niese, *supra* note 5.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* (statement of Rick Williams, Member, H. Comm. on Governmental Affs.).

voters because “[the] bill seeks to make voting by mail harder.”²³ Leader Trammell stated Section 3 would “tak[e] away one of the successes of the primary [] despite numerous failures on election day . . .” because it prohibits any state election official from the Secretary of State down from mailing registered voters applications for an absentee ballot.²⁴ Additionally, Representative Mary Margaret-Oliver questioned the necessity of Section 3 considering over 1.2 million Georgians voted by mail and responded favorably by invitation to the absentee ballot application.²⁵ Representative Margaret-Oliver also argued that this section improperly takes the authority away from the secretary of state to make decisions regarding the election during an emergency.²⁶

Representative Renitta Shannon opposed Section 3 of the Bill because it prevents local election officials from mailing the applications to the local electors.²⁷ She also opposed this section because if the supporters of Section 3 wanted the local governments to be more proactive in an effort to reduce voting problems, then amending Section 3 would actually prevent local government officials from acting in a manner consistent with the supporters of Section 3.²⁸

Representative Nguyen voiced her opposition to Section 3 of the Bill because the Secretary of State previously stated that he would not send unsolicited absentee ballot applications.²⁹ Representative Nguyen, in a statement posted to Facebook, stated that the high voter turnout resulting from the unsolicited absentee ballot applications to registered voters was a success because more voter participation leads to “[a] healthier democracy.”³⁰ As a result, she opposed the Bill because it “[would] not fix any election issues faced on June 9, 2020” and that it would prohibit many Georgians from being able to vote safely during a pandemic.³¹

In addition to legislators, both the ACLU of Georgia and Common Cause Georgia voiced concerns that Section 3 of the Bill would reduce the amount of voter turnout.³² Christopher Bruce, the Political Director of the ACLU of Georgia, stated that he was concerned that preventing the proper election entities from mailing out absentee ballot applications would prevent them from easily contacting their electors.³³ However, Mr. Bruce did not explicitly oppose the Bill in its entirety and said the ACLU “wants every Georgia citizen to be able to vote.”³⁴

Similarly, Aunna Dennis, the Executive Director of Common Cause Georgia, opposed Section 3 of the Bill because “sending absentee ballot applications to voters is one of the best ways

²³ Mark Niese, *Bill Would Ban a Repeat of Georgia Absentee Ballot Request Mailing*, THE ATLANTA JOURNAL CONSTITUTION (Jun. 26, 2020), <https://www.ajc.com/news/state--regional-govt--politics/Bill-Would-Ban-Repeat-Georgia-Absentee-Ballot-Request-Mailings/hpXad0RidSRMOHXdVpLq2N/>.

²⁴ *Id.*

²⁵ *Hearing, supra* note 8 (statement of Mary Margaret-Oliver, Member, H. Comm. on Governmental Affs.).

²⁶ *Id.*

²⁷ *Id.* (statement of Renitta Shannon, Member, H. Comm. on Governmental Affs.).

²⁸ *Id.*

²⁹ *Id.* (statement of Bee Nguyen, Member, H. Comm. on Governmental Affs.).

³⁰ Bee Nguyen, FACEBOOK (June 25, 2020), <https://www.facebook.com/beeforgeorgia/posts/sb-463-went-through-my-committee-yesterday-morning-this-bill-does-not-fix-any-el/972664143153596/>.

³¹ *Id.*

³² Niese, *supra* note 23; *cf.* Ga. Coal. for the People’s Agenda v. Kemp, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (holding that a voter ID law requiring voting signatures to exactly match the signature on one’s ID card is unconstitutional); *see also* Press Release, American Civil Liberties Union, *Voting Rights Advocates Challenge Georgia Voter ID Law in Federal Court* (September 19, 2020), <https://www.aclu.org/press-releases/Voting-Rights-Advocates-Achallenge-Georgia-Photo-Id-Law-Federal-Court> (arguing that requiring voters to provide ID would make it hard to vote under the 2006 Voter ID Act). *But c.f.* Democratic Party of Ga., Inc. v. Perdue, 707 S.E.2d 67 (Ga. 2011) (holding that 2006 Voter ID Act did not violate the Constitution of the State of Georgia).

³³ *Hearing, supra* note 8 (statement of Christopher Bruce, Political Director, American Civil Liberties Union of Ga.).

³⁴ *Id.*

to ensure their ability to vote safely.”³⁵ Ms. Dennis stated that Section 3 would “force[] [voters] to choose between their health and exercising their right to vote.”³⁶ Mirroring language used by state legislators that opposed Section 3, Ms. Dennis also argued that Section 3 would make it harder to vote in the fall elections.³⁷ Thus, Ms. Dennis asked the House Rules Committee to “reject [Section 3] and then pass SB 463.”³⁸

IMPLICATIONS IN GEORGIA

Both Democratic and Republican state legislators have agreed that voters faced problems at polling locations during the June primary elections and both parties agree that most provisions of the Bill would help fix future election problems.³⁹ Most legislators agree that Sections 1, 2, and 4 would have a positive impact on Georgia residents, because they would help fix future poll worker shortages, allow elderly voters to vote first so they do not have to wait in line for hours, and make the deadlines to register to vote in state and federal elections clearer to the voters.⁴⁰ Ultimately however, Republicans and Democratic state legislators have very different views regarding how Section 3 of the Bill would impact Georgia.⁴¹

Densely populated counties like Fulton County received an unusually large number of absentee ballot applications and had difficulty processing the applications in a timely manner.⁴² Republican legislators argued that Section 3 of the Bill would allow election officials to process absentee ballots in a timely manner in the future because they would not have to worry about additional paperwork.⁴³ Additionally, Republicans argued that part 2 of Section 3 would replace the unsolicited mailings of absentee ballot applications with an online portal that would be created by the secretary of state that would allow Georgia voters to apply online for an absentee ballot.⁴⁴

³⁵ Press Release, Common Cause Georgia, *Comm. Urged to Reject Amend., Pass SB 463* (June 25, 2020, 6:11 PM), https://www.CommonCause.org/georgia/Press-Release/Committee-Urged-to-Reject-Amendment-Pass-Sb-463/?doing_wp_cron=1601921512.7854349613189697265625 (last visited October 5, 2020).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Hearing, supra* note 8.

⁴⁰ *Id.*

⁴¹ Niese, *supra* note 23.

⁴² *Id.*; see also Mark Niese, *Investigation Concludes Fulton Failed to Send Many Absentee Ballots*, THE ATLANTA JOURNAL CONSTITUTION (Aug. 27, 2020), <https://www.ajc.com/politics/Investigation-Concludes-Fulton-Failed-to-Send-Many-Absentee-Ballots/KS5XW5BP5RCHVHGSSWP7TWM26I/> (“Fulton election officials said they were overwhelmed by unprecedented demands for absentee ballots An elections employee died from COVID-19, and the county’s registration chief was hospitalized, resulting in the elections office closing for four days to be sanitized and creating a backlog of absentee applications.” *Id.*).

⁴³ *Id.*

⁴⁴ *Hearing, supra* note 8; see also Mark Niese, *Georgia Launches Absentee Ballot Request Website*, THE ATLANTA JOURNAL CONSTITUTION (Aug. 28, 2020), <https://www.ajc.com/politics/Georgia-Launches-Paperless-Absentee-Ballot-Request-Website/ABFFNDFJQREU3ECQCO52RW5DW4/> (On August 28, 2020, the Secretary of State’s Office launched a web portal that would allow Georgia Residents to apply online for absentee ballots even though the office was not required to do so by law. *Id.* Thus, Georgia voters can either apply for an absentee ballot through this online portal or by sending an application to their local election office. *Id.* While almost 2 million Georgia residents have requested an absentee ballot, it is not known to what extent the online portal is responsible for this. *Id.*).

On the other hand, Democratic legislators argued that Section 3 of the Bill “[was] not needed” and would “remove local control” from local election boards.⁴⁵ Furthermore, they were also critical of the Bill because “any revamping [of the election process] in an election year would cause confusion and create more ways to keep people from casting their ballot.”⁴⁶ Additionally, All Voting is Local, a democratic rights groups, stated that “Georgia will have no election oversight” because the Secretary of State has been unwilling to “accept[] responsibility for [the] failing elections”⁴⁷

LEGISLATIVE GENEALOGY

On February 28, 2020, the Bill was introduced into the Senate Hopper.⁴⁸ The Bill was read in the Senate and referred to Committee on March 2, 2020.⁴⁹ The Bill was reported favorably by substitute in Committee on March 4, 2020 and read a second time in the Senate on March 5, 2020.⁵⁰ On March 12, 2020, the Bill was read a third time, engrossed, and adopted by substitute in the Senate.⁵¹ The Bill was first read by the House on March 13, 2020.⁵² The Bill was read a second time in the House on June 15, 2020. The House Governmental Affairs Committee favorable reported a substitute bill on June 24, 2020. On June 25, 2020, the House Rules Committee withdrew the Bill and recommitted it back to the House Governmental Affairs Committee.⁵³

Prepared by: *Sandler Ernst*

⁴⁵ Emil Moffait, *Georgia Sent out Nearly 7 Million Absentee Ballot Applications For Primary, But Proposed Bill Won't Let It Happen Again*, WABE (June 24, 2020), <https://www.wabe.org/Georgia-Sent-Out-Nearly-7-Million-Absentee-Ballot-Applications-for-Primary-but-Proposed-Bill-Wont-Let-it-Happen-Again/>; *see also* Representative Renitta Shannon (@RenittaShannon), TWITTER (June 4, 2020), <https://twitter.com/RenittaShannon/status/1275852474251915267?s=20> (“#SB463 seeks to make it illegal for your country to make it less risky for you to vote during #Covid-19.”).

⁴⁶ Stephen Fowler, *Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Too Few Polling Places*, WABE (Oct. 17, 2020), <https://www.wabe.org/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl/>.

⁴⁷ Press Release, All Voting is Local, *Georgia Officials Could Punish Voters with Senate Bill 463* (June 24, 2020), <https://allvotingislocal.org/press-releases/georgia-officials-could-punish-voters-with-senate-bill-463/>.

⁴⁸ S.B. 463 Status Sheet, *supra* note 3.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*