

April 24, 2023

Georgia State Election Board  
2 MLK Jr. Drive  
Suite 802 Floyd West Tower  
Atlanta, GA 30334

Re: Petition for Amendment of Election Rules (Security Balloting, Audit, and Recount Rules)

Judge Duffey and Election Board Members:

The Morgan County Democratic Committee joins the Coalition for Good Governance as co-competitor in respectfully submitting the attached set of proposed amendments to the State Election Board Rules under the provisions Rule 183-1-1-.01. The purpose of the set of proposed amendments is to update Georgia's current Election Rules to reflect the security risks present in the state's electronic voting system, to address those risks through procedures to identify and respond to security threats, and establish specific steps for mitigation of certain risks.

When Georgia adopted its new voting system in 2019, the use of electronic components expanded exponentially – in an era when attacks on such components has reached a level of sophistication that the old system did not face. It's time to add sensible rules to protect our election system – with a goal that they provide clear and enforceable standards for local and state officials to follow when faced with modern security threats.

Original notarized paper copies of the proposed amendments are being submitted to the State Election Board office as required by the above referenced Rule. We request that Board members review the electronic copies supplied by email in advance of the receipt of paper copies. We respectfully request that the proposed Rule amendments be heard and adopted at the next SEB meeting as required by Rule 183-1-1-.01(4).

**Requirements of Rule 183-1-1-.01(3)**

**(a) The name and post office address of the petitioner;**

Morgan County Democratic Committee  
PO Box 287  
Madison, GA 30650

**(b)**

Email: Jeanne Dufort, 1st Vice Chair  
Via email: jdufort@aol.com

**(b) The full text of the rule requested to be amended or repealed, or the full text of the rule desired to be promulgated;**

Exhibits 1 – 6 attached.

**(c) The reason(s) such rule should be amended, repealed, or promulgated;**

The basis for the proposed rule amendments is stated as the introduction Exhibit 1.

Our Co-petitioner, the Coalition for Good Governance, has substantive expertise on the risks of cyber threats to elections, and has developed a substantial record of facts relating to the 2021 breach; we will avoid duplicating their responses here. We join in this petition for an additional simple reason: we have watched our own local election officials struggle to determine how, or whether, to respond to such threats.

Statutes place ultimate responsibility for the proper conduct of elections on the local Superintendent, yet the rules simply do not effectively address cyber-security threats. This leaves them in an untenable situation.

The guidance they receive from the Secretary of State's office for emergency balloting procedures is focused on very simple problems: devices won't turn on, cards can't be encoded, power failure. The fundamental nature of protecting electronic devices from cyber-security risks is rarely that elemental, and yet, there are no enforceable rules in place that act as guardrails to ensure that security incidents are detected and brought to attention of professionals.

We have great confidence in our Morgan County election staff to diligently follow established state-election protocols. The Coffee County incident demonstrates that not all counties share our staff members' dedication to securing the elections. The actions of a few county officials have put all counties' elections at more risk, and having uniform enforceable rules including mandatory reporting of incidents will help protect all of us.

Additional reasons for amendment of the rules are also included in (d) below.

**(d) Any and all pertinent existing facts as to the petitioner's interest in the matter;**

We are the official Morgan County arm of the Democratic Party of Georgia. In that capacity, we have a significant interest in fair and accurate election outcomes. We recruit candidates, we help register voters, and we run Get Out the Vote campaigns. All of these are dependent on having an election system that allows voting to continue smoothly and produces trustworthy outcomes.

**(e) Any and all facts known to the petitioner which might influence the decision of the Board to initiate or not initiate rulemaking, including identification of any parties who it is known will or may be affected by the amended, repealed, or promulgated rule; and**

All Georgia voters and candidates likely benefit by adoption of a proposed rule securing the elections. Additionally, election officials at the municipal, county and state level will be required to undertake more security-oriented procedures which will affect their activities. The recommendations when implemented should substantially reduce the complexity and cost of conducting elections when hand marked paper ballots are used in compliance with the proposed rules.

Cities across the state are conducting important municipal elections in November 2023 and counties are preparing for presidential election year elections in 2024 using a compromised voting system, while the state is not addressing the extreme cybersecurity risks created by the 2021 breach. Urgent action such as adoption of recommended rules is required.

(f) Citations of legal authorities, if any, which authorize, support, or require the action requested by the petitioner.

The SEB's general authority for such rule-making is provided by O.C.G.A. § 21-2-31. Authority for use of emergency balloting by hand marked paper ballot is authorized by O.C.G.A. § 21-2-334. Authority for proposed recount and audit provisions is cited in the proposed rules in the exhibits. The requirement for the safety and accuracy of the ballot marking device system is required by O.C.G.A. § 21-2-379.24. See the federal court order detailing the risks of the BMD system in the Curling v Raffensperger case for additional support for the action requested. <https://coalitionforgoodgovernance.sharefile.com/d-sed61a0e7f9d5480f929c31027f1c80e3>

Additional information

Certainly, the limited use of touchscreen BMDs should continue for voters who wish to use them for accessibility needs. For such units, we recommend that the Secretary of State consider the use of Dominion's software application that marks a full-face ballot with non-uniform markings that resemble hand marked ballots to help protect ballot secrecy for voters who need to use the BMD units.

Our proposed amendments on Exhibits 1-6 are inserted in a copy of the applicable current complete rule. The proposed amended language is printed in red font and underlined.

We request that representatives of the Morgan County Democratic Committee, Coalition for Good Governance and potential other co-petitioners be permitted to present the proposed amendments at the next SEB meeting consistent with practice of prior SEB hearings on such rule-making petitions.

I am the authorized representative of the Morgan County Democratic Committee. Please contact me if we may provide more information that would be helpful to the Board.

Best regards,

Jeanne Dufort



1<sup>st</sup> Vice Chair

Morgan County Democratic Committee

[jdufort@aol.com](mailto:jdufort@aol.com)

770 330 9040

(Notarized document included in original paper documents submitted.)

**Verification of Petition for Amended Election Rules**

I, Jeanne Dufort, personally appeared before the undersigned public notary, duly authorized to administer oaths, and state under oath that I am fully authorized to file this rule-making petition of behalf of the Morgan County Democratic Committee. The facts alleged in the Petition for Adoption of Rules dated April 24, 2023 attached hereto are true and correct to the best of my personal knowledge, information and belief. The attached petition is submitted under the provisions of Rule 183-1-1-.01.

Dated this 24 day of April 2023



Jeanne Dufort

Sworn to and subscribed before me

This 24 day of April 2023.

## **Purpose of Security-Related Emergency Balloting, Audit and Recount Rules**

The purpose of the Rules update is to ensure that SEB Rules provide proper guidance for county election officials to identify and respond to cybersecurity incidents and vulnerabilities to safeguard the state's critical voting system infrastructure and to maintain public confidence in the state's election processes. The Board recognizes the need for a standard set of mandatory procedures for rapid response for detection, communications, investigation, evaluation, containment, mitigation and remediation for cybersecurity vulnerabilities and incidents to drive coordinated state and county responsive actions, including inter-governmental responses. Accordingly, a continuing effort will be undertaken to consider appropriate response policies to inform a series of evolving mandatory rules that will be proposed for adoption over a number of months, and updated as technology changes, security considerations and governing law mandate.

Proposed rule changes recognize that a breach of the voting system occurred in 2021 in Coffee County and unauthorized individuals posted the contents of the election management system and scanners on online site, and such content has been shared with multiple other individuals. The Rule updates address the needed resulting mitigation well in advance of 2023 municipal elections and 2024 general elections and primaries.

## **183-1-12-.02 Definitions**

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(1) As used in this rule, the term:

- (a) "Ballot" shall have the meaning set forth in [O.C.G.A. § 21-2-2](#).
- (b) "Ballot scanner" shall have the meaning set forth in [O.C.G.A. § 21-2-2](#).
- (c) "Ballot Style" shall mean the specific offices, candidates, and questions displayed on an electronic ballot marker or paper ballot for voters according to their assigned precinct.
- (d) "Electronic ballot marker" shall have the meaning set forth in [O.C.G.A. § 21-2-2](#).
- (e) "Election management system" is an electronic system that contains databases for elections, allows for the creation of ballots, generates ballot scanner memory cards, and computes tabulated results, amongst performing other election functions.
- (f) "Electronic poll book" shall mean an electronic device that contains a list registered voters with sufficient information to look up voters, check them in, and encode voter access cards that bring up the correct ballot on an electronic ballot marker.
- (g) "Election Superintendent" or "superintendent" means a county board of elections and registrations, a county board of elections, a judge of the probate court, or an elections supervisor or director so designated by a county board or judge of the

probate court. For municipal elections, the term shall include the municipal counterparts set forth in [O.C.G.A. § 21-2-2](#).

(h) "Enclosed space" shall mean that area within a polling place enclosed with a guardrail or barrier closing the inner portion of such area so that only such persons as are inside such guardrail or barrier can approach within six feet of the ballot box, voting compartments, voting booths, voting machines, electronic ballot markers, or ballot scanners.

(i) "Opening of the Polls" shall mean the commencement of voting in a particular primary, election, or runoff. Opening of the polls does not refer to the unlocking or opening of the doors of the polling place. Similarly, the term "Closing of the Polls" shall mean the cessation of voting in a particular primary, election, or runoff and not the locking or closing of the doors of the polling place.

(j) "Poll officer" shall have the meaning set forth in [O.C.G.A. § 21-2-2](#).

(k) "Polling place" shall have the meaning set forth in [O.C.G.A. § 21-2-2](#).

(l) "Precinct" shall have the meaning set forth in [O.C.G.A. § 21-2-2](#).

(m) "Security incident" shall mean an occurrence that 1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, legal use, or availability of information of a voting system, or 2) constitutes a violation or imminent threat of violation of law, State Election Board Rule, security policies, security procedures, or acceptable use policies.

(n) "Security vulnerability" means any attribute of voting system hardware, software, process, or procedure that could enable or facilitate the defeat of a security control.

(m-n) "Voter Access Card" shall mean the electronic card issued to a voter which is inserted into an electronic ballot marker to bring up the voter's correct ballot.

(n-o) "Zero Tape" shall mean a tape printed out by a ballot scanner unit which shows that no votes have been tabulated by the scanner for that election.

(o-p) "Voting system" or "voting system components" shall include electronic ballot markers, printers, ballot scanners, election management systems, electronic poll books, and voter access cards.

## Statutory Authority

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[O.C.G.A. §§ 21-2-2, 21-2-31.](#)

## History

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Original Rule entitled "Vote Recorders" adopted. F. July 24, 1968; eff. August 12, 1968.

**Repealed:** New Rule entitled "Direct Recording Electronic Voting Equipment" adopted. F. Aug. 30, 2002; eff. Sept. 19, 2002. **Amended:** F. Oct. 24, 2003; eff. Nov. 13, 2003. **Amended:** F. May 11, 2004; eff. May 31, 2004. **Amended:** ER. 183-1-12-0.4-.02 adopted. F. Sept. 10, 2004; eff. Sept. 9, 2004, the date of adoption. **Amended:** F. Dec. 28, 2005; eff. Jan. 17, 2006.

Ga. Comp. R. & Regs. r. 183-1-12-.02

**Repealed:** New Rule of same title adopted. F. Oct. 29, 2009; eff. Nov. 18, 2009. **Repealed:** New Rule of same title adopted. F. Mar. 17, 2011; eff. Apr. 6, 2011. **Repealed:** New Rule entitled "Definitions" adopted. F. Jan. 23, 2020; eff. Feb. 12, 2020.

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### **183-1-12-.05 Security of Voting System Components at County Elections Office or Designated County Storage Area**

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1. Software security. The software contained in electronic ballot markers, ballot scanners, election managements systems, and electronic poll books, regardless of whether the unit is owned by the county or the State, shall not be modified, upgraded, or changed in any way without the specific prior approval of the Secretary of State.
2. Electronic ballot markers, ballot scanners, and election management systems shall not be connected to the internet and no other software shall be loaded onto or maintained or used on computers on which the election management system software is located except as specifically authorized by the Secretary of State.
3. The room in which the election management system is located shall be locked at all times when the system is not directly under the supervision of the election superintendent or his or her designee. Lock and key access to the room where the election management system is located shall be limited to the county election superintendent; the election supervisor, if any; personnel of the county election superintendent's office designated by the county election superintendent; building maintenance personnel; and emergency personnel. Building maintenance personnel shall have access to the room in which the election management system is located only to the extent necessary to carry out their maintenance duties. The election superintendent shall maintain on file at all times in the office of the election superintendent a complete and up to date list of all maintenance personnel with access to the room in which the election management system is located. Emergency personnel shall have access to the room in which the election management system is located only as necessary in the event of an emergency and only for the duration of such emergency condition.
4. The election management system shall remain password-locked at all times when not in use.
5. While in storage at the county elections office or designated county facility, all components of the voting system (including electronic ballot markers, ballot scanners, electronic poll books, ballot boxes, and election management systems) shall be stored under lock and key at all times when not in use. Lock and key access to such items shall be limited to the county election superintendent; members of the county board of elections; the election supervisor, if any; personnel of the county election superintendent's office designated by the county election superintendent; building maintenance personnel; and emergency personnel. Building maintenance personnel shall have access to the area where such items are stored only to the extent necessary to carry out their maintenance duties. The election superintendent shall maintain on file at all times in the office of the election superintendent a complete and up to date list of all maintenance personnel with access to the area in which such items are stored. Emergency personnel shall have access to the area where such items are stored only as



necessary in the event of an emergency and only for the duration of such emergency condition. Whenever maintenance or emergency personnel are required to enter the storage area, the election superintendent must be notified of that entry as soon as possible and the election superintendent must maintain a log of those persons who entered the storage area.

6. Security Incidents and Vulnerabilities. County and municipal election superintendents shall immediately submit a written statement reporting all suspected security incidents, regardless of severity, in the fullest detail possible including photographs and video recordings if feasible, to the Secretary of State and the State Election Board. The State Election Board shall promptly undertake an investigation of the scope of the reported suspected incident and alert other appropriate officials, including law enforcement authorities.

- (a) County and municipal election superintendents shall collect, safeguard, and preserve all data related in any manner to the incident, including but not limited to video surveillance security recordings, scanner memory cards, the EMS server, activity logs, election databases including ballot images, paper ballots, and all manual and electronic records relating to elections within 6 months of the suspected incident. Such records shall be preserved until written permission of the State Election Board and the Secretary of State is obtained.
- (b) Election superintendents shall fully comply with incident response reporting, record preservation, and mitigation requirements as detailed in the Secretary of State's incident response policy.
- (c) Election superintendents shall promptly submit a written report to the Secretary of State and the State Election Board all voting system security vulnerabilities which come to their attention. The report shall be in writing with the fullest possible detail, including photographs and video records if feasible, and be submitted no later than 24 hours after such vulnerability is detected.

## Statutory Authority

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[O.C.G.A. § 21-2-31.](#)

## History

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Original Rule entitled "Ballot Envelopes" adopted. F. July 24, 1968; eff. August 12, 1968.

**Amended:** F. Aug. 5, 1969; eff. Aug. 24, 1969. **Repealed:** New Rule entitled "Ballot Envelopes and Fold Over Ballot Cards" adopted. F. May 26, 1970; eff. June 14, 1970. **Amended:** F. Mar. 6, 1987; eff. Mar. 26, 1987. **Repealed:** F. Dec. 11, 2003; eff. Dec. 31, 2003. **Adopted:** New Rule entitled "Security of Voting System Components at County Elections Office or Designated County Storage Area." F. Jan. 23, 2020; eff. Feb. 12, 2020.

## 183-1-12-.01 Conduct of Elections

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Beginning with the 2020 Presidential Preference Primary, all federal, state, and county general primaries and elections, special primaries and elections, and referendums in the State of Georgia shall be conducted via an Optical Scanning Voting System as defined by [O.C.G.A. 21-2-1\(19.1\)](#). Voting at the polls, including both Election Day and absentee-in-person voting shall be conducted via ballots marked by electronic ballot markers and tabulated by ballot scanners. The electronic ballot markers and ballot scanners shall be supplied by the Secretary of State or purchased by the counties with the authorization of the Secretary of State. Absentee-by-mail voting shall also be conducted through the use of an optical scanning voting system.

The Superintendent shall cause every polling place and advance voting location to have a sufficient number of blank paper ballots that can be marked by pen available for use in the event of emergency. The election superintendent shall also be prepared to resupply polling places with emergency paper ballots in needed ballot styles in a timely manner while voting is occurring so that polling places do not run out of emergency paper ballots.

- (a) In the event of an identified security incident involving the state's or a county's voting system, the election superintendent's use of emergency balloting as provided in Rule 183-1-12-.11(2)(c and d) is authorized and recommended as an appropriate immediate response until such time as the detected incident is evaluated by security professionals, and mitigation and remediation procedures, if necessary, are approved for implementation by the State Election Board and the Secretary of State.
- (b) If the contents of an EMS server or hard drive of ballot scanners or a copy of the voting system software are reasonably believed to have been accessed or obtained by unauthorized persons, emergency balloting procedures as provided in Rule 183-1-12-.11-1 (c, d) and supplemental post-audits as provided in Rule 183-1-15-.04 (3) shall be used following the conduct all elections, primaries and runoff elections until such time as the electronic ballot marking device voting system is declared safe for use by the Secretary of State and a majority vote of the State Election Board, following a public hearing.

## Statutory Authority

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[O.C.G.A. §§ 21-2-1, 21-2-31.](#)

## History

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Original Rule entitled "Voting Machines" adopted. F. July 24, 1968; eff. August 12, 1968.

**Repealed:** New Rule entitled "Conduct of Elections" adopted. F. Aug. 30, 2002; eff. Sept. 19, 2002. **Amended:** F. Oct. 24, 2003; eff. Nov. 13, 2003. **Repealed:** New Rule of same title adopted. F. Jan. 23, 2020; eff. Feb. 12, 2020.

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## 183-1-12-.11 Conducting Elections

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1. As each voter presents himself or herself at the polling place for the purpose of voting during the time during which the polls are open for voting, each voter shall be offered instruction by a poll officer in the method of voting on the voting system. In providing such instruction, the poll officers shall not in any manner request, suggest, or seek to persuade or induce any voter to vote any particular candidate, political party, or political body, or for or against any particular question.

2.

(a) When a person presents himself or herself at the polling place for the purpose of voting during the time during which the polls are open for voting, the person shall complete a voter certificate and submit it to the poll officers. The voter certificate may be an electronic or paper record. The poll officers shall verify the identity of the person and that the person is a registered voter of the precinct and, if so, shall approve the voter certificate and enter an appropriate designation on the electors list for the precinct reflecting that the voter has voted in the primary, election, or runoff being conducted. The voter's name shall then be entered on the appropriate numbered list of voters.

(b) A poll officer shall then issue the voter an appropriate voter access card authorizing the voter to vote the correct ballot on the touchscreen or utilize the correct access code to manually bring up the correct ballot on the touchscreen. The voter shall then enter the enclosed space in the polling place and proceed to vote his or her choices. Upon making his or her selections, the voter shall cause the paper ballot to print, remove his or her printed ballot from the printer, remove the voter access card from the touchscreen component, review the selections on his or her printed ballot, scan his or her printed ballot into the scanner, and return the voter access card to a poll officer. Then the voter shall exit the enclosed area of the polling place.

(c) If an emergency situation makes utilizing the electronic ballot markers impossible or impracticable, as determined by the election superintendent, Secretary of State, or the State Election Board, the poll officer shall issue the voter an emergency paper ballot that is to be filled out with a pen after verifying the identity of the voter and that the person is a registered voter of the precinct. Emergency paper ballots shall not be treated as provisional ballots, but instead shall be placed into the scanner in the same manner that printed ballots in the polling place are scanned. The election superintendent shall cause each polling place to have a sufficient amount of emergency paper ballots so that voting may continue uninterrupted if emergency circumstances render the electronic ballot markers or printers unusable. For any primary or general election for which a state or federal candidate is on the ballot, a sufficient amount of emergency paper ballots shall be at least 10% of the number of registered voters to a polling place. The poll manager shall store all emergency ballots in a secure manner and ensure that all used and unused emergency ballots are



accounted for. All unused emergency ballots shall be placed into a secure envelope and sealed such that the envelope cannot be opened without breaking such seal.

(d) If an emergency situation exists that makes voting on the electronic ballot markers impossible or impracticable, the poll manager shall alert the election superintendent as soon as possible. The existence of an emergency situation shall be in the discretion of the election supervisor. However, if a poll manager is unable to contact the election superintendent after diligent effort, the poll manager shall have the ability to declare that an emergency situation exists at the polling place. The poll manager shall continue diligent efforts to contact the election superintendent, and shall inform the superintendent as soon as possible of the situation at the polling place. The election superintendent, in his or her discretion, shall either overrule or concur with the declaration of emergency circumstances. While the determination of an emergency situation is in the discretion of the election superintendent, the types of events that may be considered emergencies are power outages, malfunctions causing a sufficient number of electronic ballot markers to be unavailable for use, or waiting times longer than 30 minutes.

3. At least once each hour during the time while the polls are open, the poll officers shall examine the enclosed space to verify that no unauthorized matter has been affixed to any voting system component or placed in the voting booth and that the voting system components have not been tampered with in any manner. Poll officers shall also check that no unattended ballots are left in the printer or anywhere in the enclosed space other than the appropriate ballot box. Any unattended ballots found in the enclosed space that do not belong to a voter currently in the enclosed space shall not be counted, but shall be secured and labelled as unattended ballots.
4. The polling place shall be arranged in such a manner as to provide for the privacy of the elector while voting and to allow monitoring of each voting system component by the poll officers while the polls are open. The electronic ballot markers and ballot scanners used in the polling place shall be set up in a manner to assure the privacy of the elector while casting his or her ballot while maintaining the security of such units against tampering, damage, or other improper conduct. In addition, at least one ballot marking device shall be configured for voting by physically disabled voters in wheelchairs and provisions shall be made to provide for the privacy of such electors while voting.
5. It shall be permissible under [O.C.G.A. § 21-2-410](#) and shall not constitute assistance in voting under [O.C.G.A. § 21-2-409](#) for poll officers to assist a voter in inserting the voter access card into the ballot marking device and in explaining the operation of the unit to the voter; provided that the poll officer shall withdraw from the voting booth prior to the voter making any selections. The poll officers shall not in any manner request, suggest, or seek to persuade or induce any voter to vote for any particular candidate, political party, or political body, or for or against any particular question.
6. Voters utilizing an audio tactile interface (ATI) device to vote on the ballot marking device without the assistance of any other individual shall not be considered as receiving assistance in voting and shall not be required to complete the forms required for receiving assistance in voting pursuant to [O.C.G.A. § 21-2-409](#); however, if another person other

than a poll officer is handling the printed ballot before it is inserted into the scanner, that person shall be considered as assisting.

7. The poll officers shall confirm that voters deposit their ballots and return the voter access cards to the poll officers prior to leaving the enclosed space in the polling place. The poll officers shall arrange and configure the polling place and provide staffing at such places within the polling place to confirm that a voter will not leave the enclosed space with a ballot or voter access card.

8. The election superintendent shall cause each polling place to be sufficiently staffed. At least one poll officer shall be assigned to assisting voters who have questions while they are in the voting booth but before they approach the ballot scanner. Another poll officer shall be stationed at every ballot scanner in use in the polling place while voting is occurring. The poll officer stationed at the ballot scanner shall offer each voter specific verbal instruction to review their printed paper ballot prior to scanning it. In addition to the preceding instruction, the poll officer stationed at the ballot scanner shall offer general instruction throughout the period while voting is occurring telling voters that sample ballots and magnifying devices are available to assist them in reviewing their paper ballot. The poll officer shall take all reasonable precautions not to view the selections on an elector's ballot unless it is required due to assistance requested by the elector. If a poll officer observes a voter attempting to leave the enclosed space with a paper ballot, the poll officer shall inform the voter of the consequence of not depositing his or her paper ballot into the ballot scanner prior to leaving the room.

9. A voter may request information from poll officers concerning how to use the electronic ballot marker or any other voting system component at any time during the voting process. However, once the voter scans his or her ballot into the ballot scanner, even if the ballot is blank with no votes cast, such voter shall be deemed to have voted and may not thereafter vote again. If a voter leaves the room encompassing the enclosed space with his or her paper ballot and does not place that ballot into the appropriate ballot scanner or ballot box, that voter shall be deemed to have voted and may not thereafter vote again. A sign shall be placed at the exit of the enclosed space that informs every voter that ballots may not be removed from the enclosed space. Any paper ballot that is removed from the room encompassing the enclosed space shall not be counted and shall be marked as spoiled by a poll officer.

10.

(a) If a voter discovers that the ballot presented on the electronic ballot marker is not correct or, for a partisan primary, is not the ballot that the voter desired to vote, the voter shall immediately notify a poll officer. The poll officer shall cancel or void the ballot on the electronic ballot marker without attempting in any manner to see how the voter has voted and shall then take the necessary steps to provide the voter with the correct ballot and make any necessary corrections to the voter certificate of the voter, the electors list, and the numbered list of voters. If the error is due to equipment malfunction, the poll officer shall document the incident on a form developed by the Secretary of State. The poll manager shall inform the election superintendent immediately if one or more electronic ballot markers are associated with a significant number of incidents.

**(b)** If, while reviewing his or her printed ballot, the voter discovers that the printed ballot does not contain the proper ballot selections or that the voter was not issued the proper ballot, the voter shall immediately inform a poll officer. The poll officer shall spoil the paper ballot and take the necessary steps to allow the voter to make his or her selections again on the electronic ballot marker and cause the correct ballot to be issued. If the error is due to equipment malfunction, the poll officer shall document the incident on a form developed by the Secretary of State. The poll manager shall inform the election superintendent immediately if one or more electronic ballot markers are associated with a significant number of incidents.

**(c)** If the voter places his or her paper ballot into the ballot scanner or ballot box prior to notifying the poll officials of any errors in the ballot, the voter shall be deemed to have voted and shall not be permitted to cast another ballot.

#### **11.**

**(a)** If any voting system component malfunctions during the day of a primary, election, or runoff, the poll manager shall immediately notify the election superintendent and shall not allow any voter to use the component until and unless the malfunction is corrected. The poll manager shall utilize appropriate backup procedures so that voting is not interrupted due to any equipment malfunctions. The election superintendent shall immediately arrange for the repair of the voting system component or shall provide a replacement component as soon as practicable. A replacement component shall not be used unless it has been appropriately tested prior to its use.

**(b)** In the event that a ballot scanner malfunctions, the voter shall place their voted ballot in the emergency bin connected to the ballot box. The ballots in the emergency bin shall be counted when the ballot scanner is properly functioning, by a replacement ballot scanner brought to the polling place, or, if neither are available, by another scanner at the county elections office. Poll officers may scan ballots placed into the emergency bin through the ballot scanner or a replacement ballot scanner when doing so will not interfere with voting. A voter placing his or her ballot into the emergency bin is considered to have voted that ballot and shall not be permitted to cast another ballot.

**(c)** Accredited poll watchers shall be allowed to observe the process described in this rule; however, they must do so in a manner that does not interfere with poll officials or voters.

#### **12. Polling Place Wait Time Recordings**

**(a)** On the day of any state or federal general primary, election, or runoff therefrom, the chief manager of a precinct shall measure and record the time a voter waits in line prior to checking into vote.

**(b)** The wait times shall be measured a minimum of three times while voting is occurring, in accordance with the following specifications:

- i. Morning wait times shall be measured only during the hours between 7:00AM and 11:00AM.



ii. Midday wait times shall be measured only during the hours between 11:00AM and 3:00PM.

iii. Evening wait times shall be measured only during the hours of 3:00pm and 7:00PM.

(c) Such results shall be recorded on a form provided by the Secretary of State and provided electronically in a manner determined by the Secretary of State.

## Statutory Authority

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O.C.G.A. §§ 21-2-31, 21-2-263, 21-2-409, 21-2-410.

## History

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Original Rule entitled "Conducting Elections" adopted. F. Jan. 23, 2020; eff. Feb. 12, 2020.

**Amended:** F. Mar. 2, 2020; eff. Mar. 22, 2020. **Amended:** F. Sep. 22, 2021; eff. Oct. 12, 2021.

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## **183-1-15-.03 Recount Procedure**

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### **(1) Recount by Electronic Tabulation**

- (a)** Recounts of primaries and elections conducted using an optical scanning voting system shall be in accordance with this rule.
- (b)** The recount shall be conducted by tabulating all ballots utilizing ballot scanners.
- (c)** Prior to conducting a recount, the election superintendent shall test each ballot scanner to be used in the recount. A test deck shall be prepared to include at least 75 ballots marked by an electronic ballot marker and 25 absentee ballots marked by hand that were cast in the election to be recounted. The ballots shall be selected from at least 3 different precincts, if available. The selection of individual ballots from a precinct's ballot container shall be conducted in a manner that selects ballots from throughout the ballot container. The test deck shall be tabulated by the ballot scanner or scanners to be used in the recount using one or more batches. A manual hand count of the test deck shall be made and compared to the electronic tabulation of the test deck. If the two counts do not match, the discrepancy shall be researched and additional tests may be run. If the discrepancy cannot be resolved so that the manual hand count and electronic tabulation of the test deck matches, the ballot scanner shall not be used in the recount. If, after testing all available ballot scanners, there are no ballot scanners authorized to be used in the recount, the recount shall be conducted by manual hand count. Upon completion of the test, the test deck ballots shall be returned to their original ballot containers.
- (d)** The recount shall be open to the view of the public, but no person except one designated by the superintendent or the superintendent's authorized deputy shall touch any ballot or ballot container. The superintendent may designate a viewing area by which members of the public are limited for the purpose of good order and maintaining the integrity of the recount.
- (e)** The tabulation of ballots must be completed through a precise, controlled process that ensures, for each ballot scanner used in the recount, no more than one ballot container is unsealed at any given time.
- (f)** A clear audit trail must be maintained at all times during the recount, including but not limited to, a log of the seal numbers on ballot containers before and after the recount.
- (g)** The ballot scanner shall be programmed to flag or reject ballots that contain an overvote for the contest to be recounted. One or more recount vote review panels shall be established, consistent with [O.C.G.A. § 21-2-483\(q\)](#), to manually review the overvoted ballots. The recount vote review panel shall determine by majority vote the elector's intent, as described in [O.C.G.A. § 21-2-438\(c\)](#), a duplicate ballot shall be created consistent with the elector's intent for the contest to be recounted, labeled

"RECOUNT DUPLICATE", and used in the recount. The original overvoted ballot shall be retained.

(h) All ballots that required a duplicate ballot to be created in the original primary or election, as allowed by law, shall be reviewed by a recount vote review panel to determine that the votes marked in the contest to be recounted on the duplicated ballot are consistent with the elector's intent on the original ballot, as described in [O.C.G.A. § 21-2-438\(c\)](#). If a majority of the recount vote review panel determine that the duplicated ballot is not consistent with the elector's intent on the original ballot, a new true duplicate ballot shall be created consistent with the elector's intent for the contest to be recounted, labeled "RECOUNT DUPLICATE", and used in the recount. The original overvoted ballot and initial duplicated ballot shall be retained.

(i) If it appears that a ballot is so torn, bent, or otherwise defective that it cannot be processed by the ballot scanner, the recount vote review panel shall prepare a duplicate ballot for the contest to be recounted. All duplicate ballots created during the recount shall be clearly labeled by the word "RECOUNT DUPLICATE". The defective ballot shall be retained.

(j) After all of the valid ballots to be included in the recount have been tabulated, the superintendent shall cause a printout to be made of the results and shall compare the results to the results previously obtained. If upon completing the recount, it shall appear that the original vote count for the recounted contest was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly.

## (2) Recount by Manual Hand Count

(a) A recount shall be conducted by manual hand count only:

1. As provided under [Rule 183-1-15-.03\(1\)\(c\)](#); or

2. As provided under [\[proposed\] Rule 183-1-15-04-\(3\)\(1\)](#); or

3. [At the discretion of the Secretary of State for state or federal office elections and the election superintendent for elections for other offices or ballot questions; or](#)

~~3~~ 4. Pursuant to a court order.

(b) Votes shall be counted by one or more recount teams consisting of at least three persons each. The superintendent shall select the persons for each recount team.

(c) In a recount of a partisan election, the recount team shall be composed of the election superintendent or designee thereof and one person selected by the election superintendent from a list provided by the county executive committee of each political party and body having candidates whose names appear on the ballot for such election, provided that, if there is no organized county executive committee for a political party or body, the person shall be selected from a list provided by the state executive committee of the political party or body. If, after the superintendent provides reasonable notice and a deadline to the executive committee, a county executive committee or state executive committee does not provide a sufficient number of names or does not timely delivery the list of names, the superintendent shall be

permitted to select the persons to serve on the recount team on behalf of the political party or body as needed.

(d) In a recount of a nonpartisan election, the recount team shall be composed of the election superintendent or designee thereof and two electors of the county, in the case of a county election, or the municipality, in the case of a municipal election, selected from a list provided by the chief judge of the superior court of the county in which the election is held or, in the case of a municipality which is located in more than one county, of the county in which the city hall of the municipality is located. If, after the superintendent provides reasonable notice and a deadline to the chief judge, the chief judge fails to designate a sufficient number of persons for the recount or does not timely deliver the list of names, the superintendent shall be permitted to select the persons to serve on the recount team as needed.

(e) Ballots shall be manually counted by hand in batches of no more than 30 to ensure that the number of ballots recounted matches the number originally counted.

(f) The recount teams shall determine the elector's intended vote on each ballot, by majority vote, in accordance with [Rule 183-1-15-.02](#). In the event of a tie vote by a review team, the vote of the election superintendent or designee thereof shall control.

(g) Recount teams shall compare the number of votes, overvotes, and undervotes to the number of ballots in the batch. If the numbers do not match, the batch shall be counted again.

(h) After all of the valid ballots to be included in the recount have been counted, the superintendent shall compare the results of the recount to the results previously obtained. If upon completing the recount, it shall appear that the original vote count for the recounted contest was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly.

## **Statutory Authority**

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[O.C.G.A. §§ 21-2-31, 21-2-495.](#)

## **History**

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Original Rule entitled "Optical Scan Recount Procedure" adopted. F. Mar. 2, 2020; eff. Mar. 22, 2020. **Amended:** New title "Recount Procedure." F. May 8, 2020; eff. May 28, 2020.

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## **183-1-15-.04 Audit**

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### **(1) Preparing for the Audit**

1. Following November general elections in even-numbered years, each county shall participate in a statewide risk-limiting audit with a risk limit of not greater than 10 percent as set forth in this rule prior to the certification by the Secretary of State.
2. Prior to county certification, the election superintendent of each county shall prepare a ballot manifest as instructed by the Secretary of State.
3. The contest to audit shall be selected by the Secretary of State. The Secretary of State shall set a date, time, and location after the November general election in even-numbered years to select which contest to audit. Such meeting shall be open to the public. After selecting the contest to audit, the Secretary of State shall publicly announce which contest will be audited and publish the selected contest on the Secretary of State webpage. In selecting the contest to audit, the Secretary of State shall consider the below criteria:
  - a. The closeness of the reported tabulation outcomes;
  - b. The geographical scope of the contests;
  - c. The number of ballots counted in the contests;
  - d. Any cause for concern regarding the accuracy of the reported tabulation outcome of the contests;
  - e. Any other benefits that may result from auditing certain contests; or
  - f. The ability of the county to complete the audit before the state certification deadline.
4. The audit shall be open to the public, and public notice of the date, time, and location of the audit must be posted on the county election office's website, or, if the county election's office does not have a website, in another prominent location.

### **(2) Conducting the Audit**

1. The audit shall be open to the view of the public and press, but no person except the person(s) designated by the election superintendent or the superintendent's authorized deputy shall touch any ballot or ballot container. The election superintendent may designate a viewing area from which members of the public may observe the audit for the purpose of good order and maintaining the integrity of the audit.
2. The election superintendent shall create audit teams comprised of at least two sworn designees to assist with the audit. The superintendent may designate non-employees to assist with the audit process. All persons who the superintendent



designates to assist with the audit shall take and sign an oath that they will conduct the audit accurately and securely prior to assisting with the audit.

3. Chain of custody for each ballot shall be maintained at all times during the audit, including but not limited to, a log of the seal numbers on the ballot containers before and after completing the manual audit.
4. For ballots marked by electronic ballot markers, the auditors shall rely on the printed text on the ballot to determine the voter's selection. For ballots marked by hand, the auditors shall rely on the choices indicated by the voter by filling in the oval adjacent to the candidate or question.
5. The audit shall end once all selected ballots have been counted and the risk limit for the audit has been met.
6. The election superintendent shall report the results of the audit to the Secretary of State.
7. The election superintendent shall follow instructions issued by the Secretary of State on how to specifically conduct the audit, including but not limited to setting deadlines and formats for creating ballot manifests.

### **(3) Supplemental Audits**

Supplemental post-election audits shall be conducted by the superintendent at the direction of the Secretary of State, for all county, state, and federal elections, primary elections and runoffs conducted after a security incident has been reported to the State Election Board and prior to a final determination by the State Election Board and the Secretary of State that the voting system is secure for use. No less than 50% of the contested election races on the ballot shall be audited using Risk Limiting Audit procedures as specified by the Secretary of State, or a full hand count audit at the discretion of the superintendent. The goal of the audit is to ensure that the correct winner is declared, without requiring confirmation of the exact tallies reported. The contested races selected for auditing at least 50% of such races shall be determined by random selection, but may be supplemented at the discretion of the superintendent.

1. If material discrepancies are detected in the post-election audit, a full manual recount shall be conducted under the provisions of Rule 183-1-15.03(2).
2. No supplemental audit shall be required if a full discretionary manual recount is conducted under the provisions of O.C.G.A. §21-2-495(a) or (d) and Rule 183-1-15.03(2). A candidate's or political party's request for such discretionary recount shall be heard and decided by the election superintendent in a publicly noticed meeting.

## **Statutory Authority**

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O.C.G.A. §§ 21-2-31, 21-2-498.

## **History**

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Original Rule entitled "Audit" adopted. F. Sep. 24, 2020; eff. Oct. 14, 2020.

Ga. Comp. R. & Regs. r. 183-1-15-.04

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