



1 AN ACT

2 To amend and reenact R.S. 18:401.3, relative to emergency election plans; to provide for
3 reasons for the development of a plan; to authorize alternative plans; to provide for
4 procedures for approval of a plan; to provide for an effective date; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 18:401.3 is hereby amended and reenacted to read as follows:

8 §401.3. Emergency plan by secretary of state; gubernatorial and legislative approval

9 A. Due to the occurrence of a gubernatorially declared emergency or disaster
10 occurring before or during a regularly scheduled or special election, and in order to
11 ensure maximum citizen participation in the electoral process and provide a safe and
12 orderly procedure for persons seeking to exercise their right to vote, minimize to
13 whatever degree possible a person's exposure to danger during declared states of
14 emergency, and protect the integrity of the electoral process, it is hereby declared to
15 be necessary to provide a procedure for the development of an emergency plan for
16 the holding of elections impaired as a result of such an emergency or disaster.

17 B.(1)(a) After the issuance of an executive order by the governor declaring
18 a state of emergency **or disaster** and if the secretary of state determines that such
19 emergency **or disaster** impairs an election that may otherwise be held except for
20 technical, mechanical, or logistical problems with respect to the relocation or

1 consolidation of polling places within the parish, potential shortages of
 2 commissioners and absentee commissioners, ~~or~~ shortages of voting machines, or
 3 other impairments that affect participation in or the integrity of the electoral
 4 process, the secretary of state shall certify such facts and the reasons therefor to the
 5 governor, the Senate Committee on Senate and Governmental Affairs, and the House
 6 Committee on House and Governmental Affairs.

7 (b)(i) The House Committee on House and Governmental Affairs and
 8 the Senate Committee on Senate and Governmental Affairs shall meet and
 9 function as a joint committee for all purposes pursuant to this Section. No
 10 action shall be taken by the joint committee except by the favorable vote of a
 11 majority of the members thereof from each house present and voting, each
 12 house voting separately.

13 (ii) The joint committee shall meet no later than ten days following
 14 receipt of the certification.

15 (c) If the governor and a majority of the members of each committee concur
 16 that such an emergency plan is necessary, the secretary of state shall develop an
 17 emergency plan in writing that proposes a resolution to technical, mechanical, or
 18 logistical problems impairing the holding of the election with respect to the
 19 relocation or consolidation of polling places within the parish, potential shortages of
 20 commissioners and absentee commissioners, ~~or~~ shortages of voting machines, or
 21 other impairments that affect participation in or the integrity of the electoral
 22 process. The secretary of state may also present alternative written emergency
 23 plans at the same time.

24 (2) If, in addition to the resolution of the ~~technical, mechanical, or logistical~~
 25 ~~problems as provided in Paragraph (B)(1) of this Section~~ Subsection, the secretary
 26 of state determines that it is necessary and feasible to conduct early voting ~~in certain~~
 27 ~~parishes~~ to enable displaced affected voters to vote, the secretary of state may
 28 include in the emergency plan a proposal to conduct early voting at ~~the offices of the~~
 29 ~~registrars in certain parishes in the state. Any early voting authorized by the~~
 30 ~~provisions of this Paragraph shall be conducted in the same manner as provided in~~

1 R.S. 18:1309(A) **times and locations which are accessible to affected voters.**

2 C.(1) The written emergency plan **and any alternatives** shall be submitted
 3 by the secretary of state to the Senate Committee on Senate and Governmental
 4 Affairs, the House Committee on House and Governmental Affairs, and the governor
 5 **either at the same time as he submits the certification or** as soon as practicable
 6 following ~~their~~ **the joint committee's and the governor's** concurrence with his
 7 certification. **The joint committee shall meet no later than ten days following**
 8 **receipt of the emergency plan. The secretary of state may incorporate changes**
 9 **suggested and approved by the joint committee into the emergency plan.** If a
 10 majority of the members of the Senate Committee on Senate and Governmental
 11 Affairs and of the House Committee on House and Governmental Affairs approve
 12 the emergency plan **or an alternative emergency plan, such the approved** plan
 13 shall be submitted to the members of each house of the legislature for approval by
 14 ~~mail~~ ballot as provided in this Section. If a majority of the members of each house
 15 of the legislature and the governor approve the emergency plan **or if the legislature**
 16 **overrides the governor's disapproval of the emergency plan as provided in**
 17 **Subsection E of this Section,** the secretary of state shall take all steps necessary to
 18 implement the plan and all officials of the state and of any political subdivision
 19 thereof shall cooperate with and provide assistance to the secretary of state as
 20 necessary to implement the plan.

21 **(2) The joint committee shall send notice to the governor of each**
 22 **meeting held pursuant to this Section. The governor or his designee may attend**
 23 **each joint meeting held pursuant to this Section and may provide**
 24 **recommendations to the joint committee regarding the emergency plan.**

25 D.(1) In order to obtain the approval of a majority of the elected members
 26 of each house of the legislature, the secretary of the Senate and the clerk of the
 27 House of Representatives shall jointly prepare and transmit a ballot to each member
 28 of the legislature ~~by certified mail with return receipt requested unless the legislature~~
 29 ~~is in session and the ballots may be distributed and returned during the session as~~
 30 **soon as possible in the manner** provided in this Subsection.

1 (2)(a) The ballot shall be uniform and the materials sent with the ballot shall
2 include:

3 (i) A copy of the secretary of state's certification that the emergency or
4 disaster impairs an election that may otherwise be held ~~except for certain technical,~~
5 ~~mechanical, or logistical problems~~ and the reasons therefor.

6 (ii) A copy of the emergency plan **approved by the joint committee.**

7 (iii) A copy of the roll call votes of the Senate Committee on Senate and
8 Governmental Affairs and the House Committee on House and Governmental
9 Affairs on the approval of the emergency plan.

10 (iv) The date and time on which the ballot may be returned to the secretary
11 of the Senate or the clerk of the House of Representatives, as the case may be, in
12 order for the ballot to be valid.

13 (b) Each ballot shall ~~contain the name of the member to whom it is to be~~
14 ~~mailed or delivered, and the member shall sign the ballot after casting his vote.~~
15 **include a place for the member to whom the ballot has been transmitted to**
16 **provide his name and validate his ballot after casting his vote.**

17 (3) ~~The ballots mailed to all members shall be postmarked on the same day~~
18 ~~and shall be returned to the secretary of the Senate or the clerk of the House of~~
19 ~~Representatives, as the case may be, within fifteen days after the postmarked date;~~
20 ~~or, when such ballots are delivered to the members of the legislature while in session,~~
21 ~~the ballots shall be returned to the secretary of the Senate or the clerk of the House~~
22 ~~of Representatives, as the case may be, within five days after the date the ballots~~
23 ~~were delivered to members. No ballot received after five o'clock p.m. on the fifth day~~
24 ~~after the date on which the ballots were delivered to the members during session or~~
25 ~~after five o'clock p.m. on the fifteenth day after the date on which the ballots were~~
26 ~~mailed shall be valid or counted, and the date and time received shall be marked on~~
27 ~~each such ballot and the ballot shall be marked "Invalid". Prior to five o'clock p.m.~~
28 ~~on the fifth day after the date when delivered to the members of the legislature while~~
29 ~~in session or prior to five o'clock p.m. on the fifteenth day after the postmarked date~~
30 ~~if mailed to the members of the legislature, a member may withdraw his ballot or~~

1 change his vote upon his written request.

2 ~~(4) At any time after the deadline for submitting the ballots as provided in~~
3 ~~Paragraph (3) of this Subsection, but prior to the eighteenth day after the date on~~
4 ~~which the ballots were mailed, or prior to the eighth day after the date on which the~~
5 ~~ballots were delivered to the members of the legislature in session, the secretary of~~
6 ~~the Senate and the clerk of the House of Representatives shall jointly open and~~
7 ~~tabulate the vote in roll call order for each house of the legislature. The clerk and the~~
8 ~~secretary shall hold such ballots unopened and shall not disclose the contents to any~~
9 ~~person until the day when such ballots are opened and tabulated. The tabulation sheet~~
10 ~~shall indicate by name each member who voted in favor of the plan, each member~~
11 ~~who voted against the plan, each member who did not return the ballot by the~~
12 ~~deadline, and each member whose ballot was invalid because it was not marked or~~
13 ~~signed by the member. The secretary of the Senate and the clerk of the House of~~
14 ~~Representatives shall each sign the tabulation sheet and cause a certified copy thereof~~
15 ~~to be transmitted to the secretary of state, the governor, and the chairmen of the~~
16 ~~Senate Committee on Senate and Governmental Affairs and House Committee on~~
17 ~~House and Governmental Affairs.~~

18 ~~(5) The tabulation sheet shall be a public record.~~

19 ~~(6) If regular mail service is impaired, the secretary of the Senate and the~~
20 ~~clerk of the House of Representatives shall utilize any method necessary to deliver~~
21 ~~the ballots, including commercial delivery, electronic transmission, or hand delivery,~~
22 ~~and shall keep a record of the manner of delivery utilized to deliver the ballot to each~~
23 ~~member and the date the ballot was so transmitted to each member. For the purposes~~
24 ~~of this Subsection, if such an alternative delivery method is so required, the date on~~
25 ~~which the ballot was so transmitted shall be considered to be the date postmarked.~~

26 **The clerk of the House of Representatives and the secretary of the Senate**
27 **shall transmit the ballots to all members on the same day. The clerk and the**
28 **secretary shall certify this date, which is referred to in this Subsection as the**
29 **"transmittal date".**

30 **(4) The member shall cast his vote, provide his name in the appropriate**

1 place on the ballot, validate his ballot in the manner prescribed, and return the
2 voted ballot to the clerical officer of his house.

3 (5) The clerk and the secretary shall provide notice to each member
4 from whom the clerk or the secretary, as applicable, receives a voted ballot
5 confirming that the ballot has been received.

6 (6) On the fourth business day after the transmittal date, the clerk and
7 the secretary shall provide a notice to each member whose voted ballot has not
8 been received indicating that the member's voted ballot has not been received
9 and informing the member of the deadline for returning the ballot.

10 (7) Ballots shall be returned to the clerk and the secretary no later than
11 five o'clock p.m. on the fifth business day after the transmittal date.

12 (8) Prior to the deadline for returning a ballot, a member may withdraw
13 his ballot or change his vote upon his written request.

14 (9) No ballot received by the clerk and the secretary after the deadline
15 provided in Paragraph (7) of this Subsection shall be valid or counted, but the
16 day and time received shall be recorded for each ballot received after such time,
17 and the ballot shall be marked "Invalid".

18 (10)(a) Whenever the clerk of the House of Representatives and the
19 secretary of the Senate are to transmit a ballot or notice to a member of the
20 legislature pursuant to this Section, the ballot or notice shall be transmitted
21 using the most efficient medium available to the clerk or the secretary under the
22 circumstances and may include but is not limited to electronic mail or SMS
23 communications. Any such medium shall provide for notice of receipt and the
24 records of all such transmittals and notices shall be maintained and preserved
25 for a least six months following the tabulation.

26 (b) The clerk and the secretary shall devise a method for a member to
27 validate his ballot which may include signature, personal identification number,
28 or other security method.

29 (11)(a) On the next business day after the deadline for returning ballots
30 as provided in Paragraph (7) of this Subsection the clerk of the House of

1 Representatives and the secretary of the Senate shall jointly tabulate the vote
2 in roll call order for each house of the legislature. The clerk and the secretary
3 shall hold such ballots under seal and shall not disclose the contents to any
4 person until the day when such ballots are tabulated. No ballot shall be deemed
5 spoiled if inadvertently disclosed in processing. The secretary of the Senate and
6 the clerk of the House of Representatives shall each sign the tabulation sheet
7 and cause a certified copy thereof to be transmitted to the secretary of state, the
8 governor, and the chairmen of the Senate Committee on Senate and
9 Governmental Affairs and House Committee on House and Governmental
10 Affairs. The tabulation sheet shall be a public record.

11 E. If a majority of the elected members of each house of the legislature
12 approve the emergency plan, the governor shall either approve or disapprove
13 the plan no later than five days after he receives the certified tabulation sheet.
14 If the governor approves the plan, he shall immediately send a written message
15 of approval to the secretary of state and the chairmen of the Senate Committee
16 on Senate and Governmental Affairs and House Committee on House and
17 Governmental Affairs. If the governor disapproves of the plan, he shall
18 immediately send a written message of disapproval to the secretary of the
19 Senate and the clerk of the House of Representatives. The secretary and the
20 clerk shall immediately and jointly prepare and transmit a ballot to each
21 member of the legislature utilizing the same procedures and deadlines provided
22 in Subsection D of this Section. The ballot shall contain a question phrased to
23 allow each member to cast his vote for or against overriding the governor's
24 disapproval of the emergency election plan. If two-thirds of the elected members
25 of each house vote to override the governor's disapproval of the emergency
26 election plan, the secretary of state shall implement the plan in the manner
27 provided by Subsection C of this Section.

28 Section 2. This Act shall become effective upon signature by the governor
29 or, if not signed by the governor, upon expiration of the time for bills to become law
30 without signature by the governor, as provided by Article III, Section 18 of the

1 Constitution of Louisiana. If vetoed by the governor and subsequently approved by
 2 the legislature, this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

VETO MESSAGE

"Please be advised that I have vetoed Senate Bill 20 of the Second Extraordinary Session.

This bill was drafted to address the method by which emergency election plans are submitted by the Secretary of State and adopted by the Legislature and the Governor. During the spring elections this year, which were ultimately delayed until July and August because of the COVID-19 emergency, Louisiana operated under an emergency election plan that allowed for the people of Louisiana to safely and securely vote without taking unnecessary health risks. Unfortunately, for the most recent election conducted just one week ago, the emergency election plan that was submitted by the Secretary of State was wholly inadequate for the dangers posed by the COVID-19 environment. Because it did not adequately protect the health and safety of the people of Louisiana, I rejected that plan, for reasons that I made clear at the time. Thankfully, United States District Judge Shelly Dick ordered that the July/August election plan be implemented for the November election. By all accounts, this election plan seems to have been conducted safely and securely, belying all of the concerns raised by the Attorney General and others about an emergency election plan that acknowledges that Louisiana is, in fact, in a state of emergency. Thus, the only loss to the State from the manner in which the most recent election was held is the nearly \$1 million dollars the Attorney General reportedly paid to out-of-state lawyers to unsuccessfully fight the litigation.

Senate Bill 20 is a product of the disputes over the emergency election plan this fall. As originally introduced, it was designed to significantly reduce the Governor's authority to disapprove of an election plan. This was an obvious attempt to respond to my action this fall and to eliminate the necessary check that the Governor has on legislative approval of an inadequate election plan. However, in the House, the bill was made significantly better, as it was amended to maintain that the Governor could disapprove of the emergency election plan. This disapproval could only be overridden if two-thirds of the elected members of each chamber would vote to overrule the Governor's disapproval. This is consistent with the constitutional requirement of a supermajority for the Legislature to override the Governor. Further, some of the other changes in Senate Bill 20 are favorable to the cumbersome structure in current law.

However, as finally passed, Senate Bill 20 has some defects that should not be written into law. First and foremost, there was insufficient consideration of the constitutional restriction imposed by Article 3, Section 15, which provides "action on any matter intended to have the effect of law shall be taken only in open, public meeting." The structure for voting to

approve the plan or to override the disapproval would seemingly run afoul of this requirement, as any action taken by the Legislature pursuant to this vote would have the "effect of law" and would not be taken in an open meeting. Further, this structure suffers from the same infirmity as House Bill 4 of this session in that it allows for transmittal of ballots via text message. This method of transmittal is simply not acceptable. Putting aside the irony that many of the supporters of this bill assailed the security of mail-in voting for the public while at the same time providing for mail-in voting of ballots for themselves, this process should not be taken a step further by allowing balloting by text messaging and eliminating the paper trail of a mail-in ballot.

Since there will be no statewide elections conducted before the next legislative session, I pledge to work with the bill author, Senator Hewitt, and the leadership to draft a bill in the upcoming regular session that will address these concerns, while preserving some of the improvements proposed in the current bill."