

1 HB711
2 83103-3
3 By Representatives Vance, Hinshaw, Thigpen, Martin and Beasley
4 RFD: Constitution and Elections
5 First Read: 02-MAR-06

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to absentee balloting; amending Sections
9 17-16-6, and 17-16-36, Code of Alabama 1975, to ensure that
10 the votes of overseas citizens and military personnel
11 stationed overseas are counted.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections ~~17-10-10, 17-10-23,~~ 17-16-6, and
14 17-16-36, Code of Alabama 1975, are amended to read as
15 follows:

16 ~~"§17-10-10~~

17 ~~"(a) Upon receipt of the absentee ballot, the~~
18 ~~absentee election manager shall record its receipt thereof on~~
19 ~~the absentee list as provided in Section 17-10-5 and shall~~
20 ~~safely keep the ballot without breaking the seal of the~~
21 ~~affidavit envelope.~~

22 ~~"(b) On the day of the election, beginning at 12:00~~
23 ~~noon, For absentee ballots received by noon on the day of the~~
24 ~~election, the absentee election manager shall, beginning at~~
25 ~~noon, deliver the sealed affidavit envelopes containing~~
26 ~~absentee ballots to the election officials provided for in~~
27 ~~Section 17-10-11. The election officials shall then call the~~

1 ~~name of each voter casting an absentee ballot with poll~~
2 ~~watchers present as may be provided under the laws of Alabama~~
3 ~~and shall examine each affidavit envelope to determine if the~~
4 ~~signature of the voter has been appropriately witnessed. If~~
5 ~~the witnessing of the signature and the information in the~~
6 ~~affidavit establish that the voter is entitled to vote by~~
7 ~~absentee ballot, then the election officials shall certify the~~
8 ~~findings, open each affidavit envelope, and deposit the plain~~
9 ~~envelope containing the absentee ballot into a sealed ballot~~
10 ~~box.~~

11 ~~"No poll worker or other election official shall~~
12 ~~open an affidavit envelope if the envelope indicates the~~
13 ~~ballot is an unverified provisional ballot or the affidavit~~
14 ~~printed thereon is unsigned by the voter (and unmarked), and~~
15 ~~no ballot envelope or ballot therein may be removed or~~
16 ~~counted. No poll worker or other election official shall open~~
17 ~~an affidavit envelope if the voter's affidavit signature (or~~
18 ~~mark) is not witnessed by the signatures of two witnesses or a~~
19 ~~notary public (or other officer, including a military~~
20 ~~commissioned officer, authorized to acknowledge oaths) and no~~
21 ~~ballot envelope or ballot therein may be removed or counted.~~
22 ~~The provision for witnessing of the voter's affidavit~~
23 ~~signature (or mark) in Section 17-10-7 goes to the integrity~~
24 ~~and sanctity of the ballot and election. No court or other~~
25 ~~election tribunal shall allow the counting of an absentee~~
26 ~~ballot with respect to which the voter's affidavit signature~~
27 ~~(or mark) is not witnessed by the signatures of two witnesses~~

1 ~~18 years of age or older or a notary public (or other officer~~
2 ~~authorized to acknowledge oaths) prior to being delivered or~~
3 ~~mailed to the absentee election manager.~~

4 ~~"The absentee ballots shall upon the closing of the~~
5 ~~polls be counted and otherwise handled in all respects as if~~
6 ~~the absentee voter were present and voting in person. As~~
7 ~~regards municipalities with populations of less than 10,000,~~
8 ~~in the case of municipal elections held at a time different~~
9 ~~from a primary or general election, the return mail envelopes~~
10 ~~containing the ballots shall be delivered to the election~~
11 ~~official of the precinct of the respective voters, unless the~~
12 ~~city or town having a population of less than 10,000~~
13 ~~inhabitants has, by permanent ordinance adopted six months~~
14 ~~prior to the municipal election, established a procedure for~~
15 ~~the appointment of absentee election officials pursuant to~~
16 ~~subsection (c) of Section 11-46-27.~~

17 ~~"(c) Absentee ballots cast in a second primary~~
18 ~~election by individuals voting pursuant to the Uniformed and~~
19 ~~Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff et~~
20 ~~seq., and received after noon on the day of the second primary~~
21 ~~election, shall be opened and counted at the same time as the~~
22 ~~verified provisional ballots. At noon seven days after the~~
23 ~~second primary election, the absentee election manager shall~~
24 ~~deliver the sealed affidavit envelopes containing absentee~~
25 ~~ballots to the officials provided for in Section 17-10A-2(f).~~
26 ~~Commencing at noon, these officials shall call the name of~~
27 ~~each voter casting an absentee ballot in the presence of~~

1 ~~watchers designated by any interested candidates and shall~~
2 ~~examine each affidavit envelope to determine if the signature~~
3 ~~of the voter has been appropriately witnessed. If the~~
4 ~~witnessing of the signature and the information in the~~
5 ~~affidavit establish that the voter is entitled to vote by~~
6 ~~absentee ballot, then the election officials shall certify the~~
7 ~~findings, open each affidavit envelope, and deposit the plain~~
8 ~~envelope containing the absentee ballot into a sealed ballot~~
9 ~~box.~~

10 ~~"No election official shall open an affidavit~~
11 ~~envelope if the affidavit printed thereon is unsigned by the~~
12 ~~voter (and unmarked), and no ballot envelope or ballot therein~~
13 ~~may be removed or counted. No election official shall open an~~
14 ~~affidavit envelope if the voter's affidavit signature (or~~
15 ~~mark) is not witnessed by the signatures of two witnesses or a~~
16 ~~notary public (or other officer, including a military~~
17 ~~commissioned officer, authorized to acknowledge oaths) and no~~
18 ~~ballot envelope or ballot therein may be removed or counted.~~
19 ~~The provision for witnessing of the voter's affidavit~~
20 ~~signature (or mark) in Section 17-10-7 goes to the integrity~~
21 ~~and sanctity of the ballot and election. No court or other~~
22 ~~election tribunal shall allow the counting of an absentee~~
23 ~~ballot with respect to which the voter's affidavit signature~~
24 ~~(or mark) is not witnessed by the signatures of two witnesses~~
25 ~~18 years of age or older or a notary public (or other military~~
26 ~~commissioned officer, authorized to acknowledge oaths) prior~~
27 ~~to being delivered or mailed to the absentee election manager.~~

1 ~~"The absentee ballots described in this subsection~~
2 ~~shall be opened, counted, and tabulated. The results of the~~
3 ~~absentee ballots counted and tabulated on election day shall~~
4 ~~be amended to include the results of the absentee ballots~~
5 ~~described in this subsection.~~

6 ~~"In all other respects, unless otherwise~~
7 ~~specifically provided by law, the absentee ballots described~~
8 ~~in this subsection shall be treated as other absentee ballots.~~

9 ~~"§17-10-23.~~

10 ~~"No absentee ballot shall be opened or counted if~~
11 ~~received by the absentee election manager by mail, unless~~
12 ~~postmarked as of the date prior to the day of the election and~~
13 ~~received by mail no later than noon on the day of election,~~
14 ~~or, if received by the absentee election manager by hand~~
15 ~~delivery, unless so delivered to the absentee election manager~~
16 ~~not later than 5:00 p.m. on the day prior to the election.~~

17 ~~"The above provision does not apply in the case of~~
18 ~~individuals voting absentee in a second primary election~~
19 ~~pursuant to the federal Uniformed and Overseas Citizens~~
20 ~~Absentee Voting Act ("UOCAVA"), 42 U.S.C. 1973ff et seq. In~~
21 ~~the case of UOCAVA voters voting absentee in a second primary~~
22 ~~election, no absentee ballot shall be opened or counted, if~~
23 ~~received by the absentee election manager by mail, unless~~
24 ~~postmarked as of the day of the second primary election and~~
25 ~~received by mail no later than noon seven days after the~~
26 ~~second primary election.~~

1 ~~"Except as to provisional absentee ballots that have~~
2 ~~not been verified by seven days after the election, any~~
3 ~~election official who fails to count a legal vote under Act~~
4 ~~96-885 cast by absentee ballot shall be guilty of a Class C~~
5 ~~felony and punished as provided by law.~~

6 "§17-16-6

7 "Presidential preference primaries and primary
8 elections, except special primary elections, held at the
9 expense of the state or counties, shall be held on the first
10 Tuesday in June. When necessary, as provided in this chapter,
11 a second or runoff primary election shall be held on the ~~last~~
12 ~~Tuesday in June sixth Tuesday~~ last Tuesday in June following
13 said primary election. Any second primary shall be held by the
14 same election officers who held the first primary, and be held
15 at the same places as the first primary election. No primary
16 shall be held by any political party except as herein
17 provided. Primary elections herein provided for shall be held
18 at the regular polling places established for the purpose of
19 holding general elections.

20 For the qualified electors who are overseas citizens
21 and active duty military personnel stationed overseas, the
22 absentee election manager shall prepare a "special absentee
23 ballot" for the second primary to be sent to the voter in
24 addition to the regular absentee ballot. The "special absentee
25 ballot" shall contain a list of all offices being contested
26 with three or more candidates and the candidates qualifying
27 for the election in each office. The "special absentee ballot"

1 shall permit the elector to vote in the second primary
2 election by indicating his or her order of preference for each
3 candidate for each office. To indicate his or her order of
4 preference for each candidate for each office, the voter shall
5 put the number one next to the name of the candidate who is
6 the voter's first choice, the number two for the voter's
7 second choice, and so forth, so that, in consecutive numerical
8 order, a number indicating the voter's preference is written
9 by the voter next to the candidate's name on the ballot.
10 Notwithstanding the foregoing, the voter shall not be required
11 to indicate a preference for more than one candidate on the
12 ballot if he or she chooses. The "special absentee ballot"
13 shall be marked as a "special run-off ballot." Instructions
14 shall be sent with the "special absentee ballot" to the
15 qualified voter explaining the instant run-off voting process.

16 "§17-16-36.

17 "(a) At the respective meetings of the respective
18 executive committees, the county executive committee shall, as
19 to candidates in the primary election for office, except
20 candidates for county office, publicly ascertain, determine
21 and declare whether any candidate for office in the primary
22 election has received a majority of the votes cast for the
23 office, and, if so, declare the candidate the nominee of the
24 party for the office for which he was a candidate and for
25 which he received a majority of the votes cast for that office
26 in the primary election.

1 "(b) If no candidate receives a majority of all of
2 the votes cast in such primary election for any one office or
3 offices for the nomination to which there were more than two
4 candidates, then there shall be held a second primary election
5 on the ~~last Tuesday in June sixth Tuesday~~ last Tuesday in June
6 following the primary election, and the chairman of the state
7 executive committee shall certify to the Secretary of State,
8 immediately upon the completion of such canvass as aforesaid,
9 the names of the two candidates of his party to receive the
10 highest number of votes in the first primary election for such
11 office or offices, except county officers, and who are to be
12 voted for in the second primary election. The chairman of each
13 county executive committee shall, immediately upon the
14 completion of such canvass, certify to the probate judge of
15 the county the names of the two candidates who received the
16 highest number of votes in the first primary for nomination to
17 any county office. The Secretary of State shall, within not
18 more than six days from the date the certificate is received
19 from the chairman of the state executive committee, certify to
20 the probate judge of any county where a second primary
21 election is to be held the name or names of the candidates
22 certified to him as herein provided by the chairman of the
23 state executive committee. The probate judge of each county in
24 Alabama shall in the manner and form as required by this
25 chapter and the general laws of Alabama, have prepared and
26 printed all election supplies and all ballots to be voted in
27 the second primary election, which ballots shall contain,

1 under appropriate headings or titles of the offices to be
2 filled, the names of the two candidates for each office so
3 certified to him by the Secretary of State and the chairman of
4 the county executive committee, as herein required, as well as
5 such other matters as are required by this chapter and the
6 general laws of Alabama, on ballots for the first primary
7 election.

8 "(c) At the second primary election, no person can
9 be a candidate except the two persons who receive the highest
10 number of votes for the offices for which they were candidates
11 in the first primary election.

12 "(d) The returns from the second primary election
13 shall be made and the votes canvassed, tabulated and certified
14 and the results declared in the same manner provided in this
15 chapter for making, canvassing, tabulating, certifying and
16 declaring the results of the first primary election. Absentee
17 ballots marked as "special run-off ballots" received from a
18 qualified voter shall be opened for the second primary
19 election as are other ballots. In counting the "special
20 run-off ballots," one of the election officials shall open the
21 envelop containing the special run-off ballot and read the
22 numbers indicated next to the names of the two candidates in
23 the second primary election. The candidate with the highest
24 ranking shall receive the vote. The Secretary of State shall
25 prepare instructions for opening, counting, and canvassing
26 "special run-off ballots" and provide the instructions to each
27 county board of registrars and election officials. The county

1 executive committee of the parties participating in the
2 primary election shall meet at the courthouse of their
3 respective counties not later than the second Friday following
4 the second primary election and receive the returns, canvass
5 and tabulate the same by precinct and publicly declare the
6 results thereof. The chairman of each county executive
7 committee shall forthwith, and not later than noon on the
8 second Monday following the primary election, certify and
9 return to the chairman of the state executive committee a
10 statement and tabulation by precincts of the results of the
11 second primary election and of the number of votes received by
12 each candidate for office therein voted for except candidates
13 for county office. Not later than noon on the third Wednesday
14 following the second primary election, the state executive
15 committee, or such subcommittee thereof as may have been
16 appointed by the chairman thereof for such purpose, shall meet
17 at the State Capitol in Montgomery and receive the returns and
18 canvass and tabulate the same by counties, and publicly
19 declare on that day the result thereof as to all candidates
20 voted for, except as to candidates for county office which
21 results shall be final. At such respective meetings of the
22 respective executive committees, the county executive
23 committee shall, as to candidates for county office voted for
24 in the second primary election, and the state executive
25 committee shall, as to candidates for office in the second
26 primary election voted for therein, except candidates for
27 county office, publicly ascertain and determine the candidates

1 receiving a majority of all of the votes cast in such second
2 primary election for any one office, and the candidates so
3 ascertained and determined to have received a majority of all
4 of the votes cast in such second primary election for the
5 office shall be declared the nominee of the party for such
6 office by the respective county and state executive
7 committees. Thereupon and immediately upon the completion of
8 such canvass as aforesaid, the chairman thereof shall certify
9 to and file with the probate judge of his county the names of
10 those who have been nominated in the first or the second
11 primary election or as otherwise authorized or provided by
12 this chapter, as candidates of his party for county offices;
13 and in like manner, and immediately upon the completion of
14 such canvass, as aforesaid by the state executive committee,
15 or subcommittee thereof, the chairman of the state executive
16 committee shall certify to and file with the Secretary of
17 State the names of those who have been nominated in the first
18 or second primary election or as otherwise authorized or
19 provided by this chapter as candidates of his party for
20 office, except candidates for county office, and the names of
21 the persons so certified shall be placed upon the official
22 ballot of the general election to be held in November next
23 thereafter as the candidates of the party for the offices for
24 which they, respectively, have been so nominated.

25 "(e) The state executive committee or such
26 subcommittee as provided in this section shall also provide
27 the Secretary of State with the second primary election

1 returns by precincts according to county on a form authorized
2 by the Secretary of State on the third Wednesday following the
3 secondary primary, county and municipal returns excepted."

4 Section 2. This act shall become effective on ~~the~~
5 ~~first day of the third month following its passage and~~
6 approval by the Governor, or its otherwise becoming law. This
7 act shall not be enforced until it is precleared pursuant to
8 Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Constitution and
Elections 02-MAR-06

Read for the second time and placed
on the calendar with 1 substitute
and 09-MAR-06

Read for the third time and passed
as amended 16-MAR-06

Yeas 101, Nays 1, Abstains 0

Greg Pappas
Clerk