HB711

83103-3

By Representatives Vance, Hinshaw, Thigpen, Martin and Beasley

RFD: Constitution and Elections

First Read: 02-MAR-06
A BILL
TO BE ENTITLED
AN ACT

Relating to absentee balloting; amending Sections 17-10-10, 17-10-23, 17-16-6, and 17-16-36, Code of Alabama 1975, to ensure that the votes of overseas citizens and military personnel stationed overseas are counted.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§17-10-10

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

"(b) On the day of the election, beginning at 12:00 noon, for absentee ballots received by noon on the day of the election, the absentee election manager shall, beginning at noon, deliver the sealed affidavit envelopes containing absentee ballots to the election officials provided for in Section 17-10-11. The election officials shall then call the..."
name of each voter casting an absentee ballot with poll
watchers present as may be provided under the laws of Alabama
and shall examine each affidavit envelope to determine if the
signature of the voter has been appropriately witnessed. If
the witnessing of the signature and the information in the
affidavit establish that the voter is entitled to vote by
absentee ballot, then the election officials shall certify the
findings, open each affidavit envelope, and deposit the plain
envelope containing the absentee ballot into a sealed ballot
box.

"No poll worker or other election official shall
open an affidavit envelope if the envelope indicates the
ballot is an unverified provisional ballot or the affidavit
printed thereon is unsigned by the voter (and unmarked), and
no ballot envelope or ballot therein may be removed or
counted. No poll worker or other election official shall open
an affidavit envelope if the voter's affidavit signature (or
mark) is not witnessed by the signatures of two witnesses or a
notary public (or other officer, including a military
commissioned officer, authorized to acknowledge oaths) and no
ballot envelope or ballot therein may be removed or counted.
The provision for witnessing of the voter's affidavit
signature (or mark) in Section 17-10-7 goes to the integrity
and sanctity of the ballot and election. No court or other
election tribunal shall allow the counting of an absentee
ballot with respect to which the voter's affidavit signature
(or mark) is not witnessed by the signatures of two witnesses
18 years of age or older or a notary public (or other officer
authorized to acknowledge oaths) prior to being delivered or
mailed to the absentee election manager.

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

"(c) Absentee ballots cast in a second primary
election by individuals voting pursuant to the Uniformed and
seq., and received after noon on the day of the second primary
election, shall be opened and counted at the same time as the
verified provisional ballots. At noon seven days after the
second primary election, the absentee election manager shall
deliver the sealed affidavit envelopes containing absentee
ballots to the officials provided for in Section 17-10A-2(f).
Commencing at noon, these officials shall call the name of
each voter casting an absentee ballot in the presence of
watchers designated by any interested candidates and shall examine each affidavit envelope to determine if the signature of the voter has been appropriately witnessed. If the witnessing of the signature and the information in the affidavit establish that the voter is entitled to vote by absentee ballot, then the election officials shall certify the findings, open each affidavit envelope, and deposit the plain envelope containing the absentee ballot into a sealed ballot box.

"No election official shall open an affidavit envelope if the affidavit printed thereon is unsigned by the voter (and unmarked), and no ballot envelope or ballot therein may be removed or counted. No election official shall open an affidavit envelope if the voter's affidavit signature (or mark) is not witnessed by the signatures of two witnesses or a notary public (or other officer, including a military commissioned officer, authorized to acknowledge oaths) and no ballot envelope or ballot therein may be removed or counted. The provision for witnessing of the voter's affidavit signature (or mark) in Section 17-10-7 goes to the integrity and sanctity of the ballot and election. No court or other election tribunal shall allow the counting of an absentee ballot with respect to which the voter's affidavit signature (or mark) is not witnessed by the signatures of two witnesses 18 years of age or older or a notary public (or other military commissioned officer, authorized to acknowledge oaths) prior to being delivered or mailed to the absentee election manager."
“The absentee ballots described in this subsection shall be opened, counted, and tabulated. The results of the absentee ballots counted and tabulated on election day shall be amended to include the results of the absentee ballots described in this subsection.

“In all other respects, unless otherwise specifically provided by law, the absentee ballots described in this subsection shall be treated as other absentee ballots.

“§17-10-23.

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

“The above provision does not apply in the case of individuals voting absentee in a second primary election pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. 1973ff et seq. In the case of UOCAVA voters voting absentee in a second primary election, no absentee ballot shall be opened or counted, if received by the absentee election manager by mail, unless postmarked as of the day of the second primary election and received by mail no later than noon seven days after the second primary election."
"Except as to provisional absentee ballots that have not been verified by seven days after the election, any election official who fails to count a legal vote under Act 96-885 cast by absentee ballot shall be guilty of a Class C felony and punished as provided by law.

"§17-16-6

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

For the qualified electors who are overseas citizens and active duty military personnel stationed overseas, the absentee election manager shall prepare a "special absentee ballot" for the second primary to be sent to the voter in addition to the regular absentee ballot. The "special absentee ballot" shall contain a list of all offices being contested with three or more candidates and the candidates qualifying for the election in each office. The "special absentee ballot"
shall permit the elector to vote in the second primary
election by indicating his or her order of preference for each
candidate for each office. To indicate his or her order of
preference for each candidate for each office, the voter shall
put the number one next to the name of the candidate who is
the voter's first choice, the number two for the voter's
second choice, and so forth, so that, in consecutive numerical
order, a number indicating the voter's preference is written
by the voter next to the candidate's name on the ballot.
Notwithstanding the foregoing, the voter shall not be required
to indicate a preference for more than one candidate on the
ballot if he or she chooses. The "special absentee ballot"
shall be marked as a "special run-off ballot." Instructions
shall be sent with the "special absentee ballot" to the
qualified voter explaining the instant run-off voting process.
"§17-16-36.
"(a) At the respective meetings of the respective
executive committees, the county executive committee shall, as
to candidates in the primary election for office, except
candidates for county office, publicly ascertain, determine
and declare whether any candidate for office in the primary
election has received a majority of the votes cast for the
office, and, if so, declare the candidate the nominee of the
party for the office for which he was a candidate and for
which he received a majority of the votes cast for that office
in the primary election.
"(b) If no candidate receives a majority of all of the votes cast in such primary election for any one office or offices for the nomination to which there were more than two candidates, then there shall be held a second primary election on the last Tuesday in June, sixth Tuesday last Tuesday in June following the primary election, and the chairman of the state executive committee shall certify to the Secretary of State, immediately upon the completion of such canvass as aforesaid, the names of the two candidates of his party to receive the highest number of votes in the first primary election for such office or offices, except county officers, and who are to be voted for in the second primary election. The chairman of each county executive committee shall, immediately upon the completion of such canvass, certify to the probate judge of the county the names of the two candidates who received the highest number of votes in the first primary for nomination to any county office. The Secretary of State shall, within not more than six days from the date the certificate is received from the chairman of the state executive committee, certify to the probate judge of any county where a second primary election is to be held the name or names of the candidates certified to him as herein provided by the chairman of the state executive committee. The probate judge of each county in Alabama shall in the manner and form as required by this chapter and the general laws of Alabama, have prepared and printed all election supplies and all ballots to be voted in the second primary election, which ballots shall contain,
under appropriate headings or titles of the offices to be filled, the names of the two candidates for each office so certified to him by the Secretary of State and the chairman of the county executive committee, as herein required, as well as such other matters as are required by this chapter and the general laws of Alabama, on ballots for the first primary election.

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

"(d) The returns from the second primary election shall be made and the votes canvassed, tabulated and certified and the results declared in the same manner provided in this chapter for making, canvassing, tabulating, certifying and declaring the results of the first primary election. Absentee ballots marked as "special run-off ballots" received from a qualified voter shall be opened for the second primary election as are other ballots. In counting the "special run-off ballots," one of the election officials shall open the envelop containing the special run-off ballot and read the numbers indicated next to the names of the two candidates in the second primary election. The candidate with the highest ranking shall receive the vote. The Secretary of State shall prepare instructions for opening, counting, and canvassing "special run-off ballots" and provide the instructions to each county board of registrars and election officials. The county
executive committee of the parties participating in the
primary election shall meet at the courthouse of their
respective counties not later than the second Friday following
the second primary election and receive the returns, canvass
and tabulate the same by precinct and publicly declare the
results thereof. The chairman of each county executive
committee shall forthwith, and not later than noon on the
second Monday following the primary election, certify and
return to the chairman of the state executive committee a
statement and tabulation by precincts of the results of the
second primary election and of the number of votes received by
each candidate for office therein voted for except candidates
for county office. Not later than noon on the third Wednesday
following the second primary election, the state executive
committee, or such subcommittee thereof as may have been
appointed by the chairman thereof for such purpose, shall meet
at the State Capitol in Montgomery and receive the returns and
canvass and tabulate the same by counties, and publicly
declare on that day the result thereof as to all candidates
voted for, except as to candidates for county office which
results shall be final. At such respective meetings of the
respective executive committees, the county executive
committee shall, as to candidates for county office voted for
in the second primary election, and the state executive
committee shall, as to candidates for office in the second
primary election voted for therein, except candidates for
county office, publicly ascertain and determine the candidates
receiving a majority of all of the votes cast in such second
primary election for any one office, and the candidates so
ascertained and determined to have received a majority of all
of the votes cast in such second primary election for the
office shall be declared the nominee of the party for such
office by the respective county and state executive
committees. Thereupon and immediately upon the completion of
such canvass as aforesaid, the chairman thereof shall certify
to and file with the probate judge of his county the names of
those who have been nominated in the first or the second
primary election or as otherwise authorized or provided by
this chapter, as candidates of his party for county offices;
and in like manner, and immediately upon the completion of
such canvass, as aforesaid by the state executive committee,
or subcommittee thereof, the chairman of the state executive
committee shall certify to and file with the Secretary of
State the names of those who have been nominated in the first
or second primary election or as otherwise authorized or
provided by this chapter as candidates of his party for
office, except candidates for county office, and the names of
the persons so certified shall be placed upon the official
ballot of the general election to be held in November next
thereafter as the candidates of the party for the offices for
which they, respectively, have been so nominated.

"(e) The state executive committee or such
subcommittee as provided in this section shall also provide
the Secretary of State with the second primary election
returns by precincts according to county on a form authorized
by the Secretary of State on the third Wednesday following the
secondary primary, county and municipal returns excepted."

Section 2. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law. This
act shall not be enforced until it is precleared pursuant to
House of Representatives

Read for the first time and referred to the House of Representatives 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