

1 HB69  
2 164033-1  
3 By Representative Williams (JD)  
4 RFD: Constitution, Campaigns and Elections  
5 First Read: 03-MAR-15

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8 SYNOPSIS: Under existing municipal election law, the  
9 mayor is required to deliver absentee election  
10 supplies to the clerk not less than 21 days prior  
11 to an election. Title 17, Code of Alabama 1975,  
12 requires specific deadlines for providing absentee  
13 election supplies in municipal elections.

14 This bill would remove conflicting language  
15 in Title 11 in order to conform to Title 17.

16 Under existing municipal election law, the  
17 term voting machines is used in Chapter 46 of Title  
18 11, Code of Alabama 1975. The term voting machines  
19 in Chapter 46 generally applies to mechanical  
20 voting machines. Other election laws authorize the  
21 governing bodies of counties, municipalities, and  
22 other political subdivisions to adopt and direct  
23 the use of electronic vote counting systems.

24 This bill would distinguish voting machines  
25 from electronic vote counting systems in municipal  
26 elections in order to clarify that the statutory  
27 requirements applicable to voting machines do not

1 apply to municipalities using electronic vote  
2 counting systems.

3 Under existing municipal election law, in  
4 the event of a tie after a runoff election, the  
5 municipal governing body votes to determine the  
6 winner. Section 17-12-23, Code of Alabama 1975,  
7 requires that, when there is a tie between the two  
8 highest candidates for the same office in a runoff  
9 election, the winner is decided by lot.

10 This bill would provide that in a municipal  
11 election, the municipal governing body would have  
12 one week from the runoff election canvassing date  
13 to decide the winner of the runoff election. If the  
14 governing body fails to act within that time, the  
15 tie would be decided by lot not later than 5:00  
16 P.M. on the first Tuesday following the runoff  
17 election.

18  
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22  
23 Relating to municipal elections conducted pursuant  
24 to Chapter 46 of Title 11, Code of Alabama 1975; to amend  
25 Section 11-46-32, Code of Alabama 1975, to change the deadline  
26 requirement for delivery of absentee election supplies from 21  
27 days to 35 days prior to the election date; to amend Section

1 11-46-33, Code of Alabama 1975, to distinguish the term voting  
2 machines from electronic vote counting systems as defined in  
3 Title 17, Code of Alabama 1975; and to amend Section 11-46-55,  
4 Code of Alabama 1975, to provide the procedure to establish  
5 the winner of a municipal election in the event of a tie after  
6 the runoff election.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 11-46-32, 11-46-33, and  
9 11-46-55, Code of Alabama 1975, are amended to read as  
10 follows:

11 "§11-46-32.

12 "(a) The mayor or other chief executive officer of  
13 the municipality shall at the expense of the municipality  
14 procure and superintend and insure the delivery to the  
15 election officers at each polling place within the corporate  
16 limits of the municipality of the necessary election supplies  
17 and shall also procure and deliver or cause to be delivered to  
18 the municipal clerk ~~not less than 21 days prior to the holding~~  
19 ~~of any election to which this article pertains~~ a sufficient  
20 number of the absentee ballots and the envelopes therefor  
21 prescribed by general laws and other supplies needed for the  
22 handling of absentee ballots in such election in the manner  
23 prescribed by general law. In the event the municipal clerk is  
24 a candidate in the election, he shall immediately upon receipt  
25 of the absentee ballots and other supplies deliver the same to  
26 the person appointed pursuant to Section 11-46-55 to act in  
27 his stead.

1           "(b) When paper ballots are used, such supplies  
2 shall consist of: At least 100 ballots for each 50 registered  
3 electors at each voting place; the same number of black seals,  
4 two inches square, around the outer edge of which is a  
5 mucilaginous surface one-fourth inch wide, so designed that a  
6 seal may be placed securely over the square bearing the ballot  
7 number in such manner that it will make it impossible to read  
8 such number without removing the seal yet such seal may be  
9 removed without obliterating the number; ballot boxes; blank  
10 poll lists; three or more cards of instructions to voters for  
11 each ward or voting district, which shall be printed in large  
12 clear type and shall contain full instructions to electors as  
13 to what should be done, first, to obtain ballots for voting,  
14 second, to prepare the ballot for deposit in the ballot box,  
15 third, to obtain a new ballot in place of one accidentally  
16 spoiled and, fourth, to obtain a watcher for each candidate to  
17 be voted for; certificates of results; oaths; and any other  
18 stationery, blank forms, or supplies necessary in the conduct  
19 of the election.

20           "(c) When voting machines are used, such supplies  
21 shall consist of: Ballot labels; diagrams; blanks for keeping  
22 a record of assisted voters; seals; blank forms for a  
23 statement of canvass of the votes cast on each machine, such  
24 forms to conform to the type of voting machine to be used and  
25 the designating number and letter if the construction of the  
26 machine is such as to require a designating number and letter  
27 of each candidate (or proposition) to be printed next to the

1 candidate's name on the statement of canvass; and all other  
2 necessary election supplies for use on voting machines.

3 "§11-46-33.

4 "(a) Whenever voting machines are to be used in any  
5 municipal election the municipal clerk shall:

6 "(1) Cause the proper ballot labels to be placed on  
7 the voting machines;

8 "(2) Cause the machines to be placed in proper  
9 working order for voting;

10 "(3) Examine all voting machines in the presence of  
11 authorized watchers for any interested persons before they are  
12 sent out to the polling places;

13 "(4) See that all the registering counters are set  
14 at zero;

15 "(5) Lock, in the presence of authorized watchers,  
16 all voting machines so that the counting machinery cannot be  
17 operated; and

18 "(6) Seal each one with a numbered seal, a list of  
19 which numbered seals and the number on the protective  
20 counters, together with the number of the voting place to  
21 which it was sent shall be kept as a permanent record in such  
22 clerk's office, open to any citizen.

23 "(b) The inspection and sealing of voting machines  
24 shall begin not later than 9:00 A.M., of the Monday before any  
25 election at which such machines are to be used and shall  
26 continue until all machines are sealed. When all machines are  
27 locked and sealed, the key to each machine shall be placed in

1 an envelope and sealed, the signature of the municipal clerk  
2 and the signature of two watchers of opposed interest (if such  
3 there shall be) shall be placed across the seal, and on the  
4 envelope shall be written the number then on the protective  
5 counter and the number on the seal of the voting machines.  
6 This envelope shall be delivered to the election inspector who  
7 will serve as an election officer at the polling place where  
8 such machine is used.

9 "(c) It shall be the duty of the municipal clerk to  
10 see that a voting machine or machines, together with an  
11 instruction model for each machine showing a portion of the  
12 face of such machine in use at such election, is delivered to  
13 each and every polling place where machines are required by  
14 law to be used at least one hour before the time set for  
15 opening the polls in such ward. After the machine has been  
16 delivered, the clerk shall cause such machine to be set up in  
17 the proper manner and cause protection to be given so that  
18 such machine shall be free from molestation and injury. The  
19 protective curtains shall be examined to see that they  
20 properly conceal the actions of the voter while such voter is  
21 operating the machine. All poll lists and necessary supplies  
22 shall be delivered to the inspector at the same time the key  
23 or keys to the machine are delivered.

24 "(d) Except as otherwise provided by law, the term  
25 voting machines, as used in this title, shall not include  
26 electronic vote counting systems as defined in Title 17.

27 "§11-46-55.

1           "(a) Commencing at 12:00 noon on the first Tuesday  
2 next after the election, the municipal governing body shall  
3 proceed to open the envelopes addressed to the governing body  
4 which have been delivered by the several returning officers to  
5 the municipal clerk, canvass the returns, and ascertain and  
6 determine the number of votes received by each candidate and  
7 for and against each proposition submitted at the election. If  
8 it appears that any candidate or any proposition in the  
9 election has received a majority of the votes cast for that  
10 office or on that question, the municipal governing body shall  
11 declare the candidate elected to the office or the question  
12 carried, and a certificate of election shall be given to the  
13 persons by the municipal governing body or a majority of them,  
14 which shall entitle the persons so certified to the possession  
15 of their respective offices immediately upon the expiration of  
16 the terms of their predecessors as provided by law. If the  
17 certification results of provisional ballots cast at the  
18 election have been received from the board of registrars prior  
19 to the first Tuesday next after the election, or if no  
20 provisional votes were cast in the election, the municipal  
21 governing body, at any special or regular meeting, may canvas  
22 the results before the first Tuesday next after the election.

23           "(b) If a single office is to be filled at the  
24 election and there is more than one candidate therefor, then  
25 the majority of the votes cast for the office in the election  
26 shall be ascertained by dividing the total votes cast for all  
27 candidates for the office by two, and any number of votes in

1 excess of one half of the total votes cast for all candidates  
2 for the office shall be a majority within the meaning of  
3 subsection (a).

4 "(c) If two or more offices constituting a group are  
5 to be filled and there are more candidates for election than  
6 there are offices, then the majority of the votes cast for the  
7 office in the election shall be ascertained by dividing the  
8 total vote cast for all candidates for the offices by the  
9 number of positions to be filled and then dividing the result  
10 by two. Any number of votes in excess of the number  
11 ascertained by the last division shall be the majority  
12 prescribed in subsection (a) as necessary for election. If in  
13 ascertaining the result in this way it appears that more  
14 candidates have obtained this majority than there are  
15 positions to be filled, then those having the highest vote, if  
16 beyond the majority just defined, shall be declared elected to  
17 fill such positions.

18 "(d) If no candidate receives a majority of all the  
19 votes cast in such election for any one office or offices for  
20 the election to which there were more than two candidates,  
21 then the municipal governing body shall order a second or  
22 runoff election to be held on the sixth Tuesday next  
23 thereafter following the regular election, at which election  
24 the two candidates having received the most and the second  
25 most votes, respectively, shall be candidates, and the person  
26 receiving the highest number of votes for that office in the  
27 runoff election shall be declared elected. If only two

1 candidates are standing for election for any one office or  
2 offices and neither candidate receives a majority, then the  
3 municipal governing body shall order a second or runoff  
4 election to be held on the sixth Tuesday next thereafter  
5 following the regular election, at which election the two  
6 candidates shall be candidates, and the person receiving the  
7 highest number of votes for that office in the runoff election  
8 shall be declared elected. In the event one of the candidates  
9 for a particular office in the runoff election withdraws, then  
10 there need not be a second election to fill the office nor  
11 shall the name of either the party so withdrawing or the  
12 remaining candidate be printed on the ballot of any second  
13 election held under this article. This second election shall  
14 be held by the same election officers who held the first  
15 election and at the same places the first election was held.  
16 If there should be a tie vote cast at any runoff election,  
17 then in that event the tie shall be decided by the municipal  
18 governing body no later than 12:00 noon on the first Tuesday  
19 following the second or runoff election. A vote for a  
20 particular candidate by a majority of those members eligible  
21 to vote of the governing body shall be necessary to decide the  
22 election in his or her favor. If the municipal governing body  
23 fails to break the tie, the elected candidate shall be decided  
24 by lot by the judge of probate of the county no later than  
25 5:00 P.M. on the first Tuesday following the second or runoff  
26 election in the presence of the candidates and other electors  
27 who choose to be present. The municipal clerk shall file a

1 copy of each certificate of election in the office of the  
2 judge of probate of the county in which the city or town is  
3 situated, and the judge shall file the certificate in the same  
4 manner that he or she files the declaration of the result of  
5 elections to county offices."

6 Section 2. This act shall become effective  
7 immediately following its passage and approval by the  
8 Governor, or its otherwise becoming law.