

1 SB39
2 125637-2
3 By Senators Dial, Holley, Smitherman, Scofield, Brewbaker and
4 Whatley
5 RFD: Constitution, Campaign Finance, Ethics, and Elections
6 First Read: 01-MAR-11
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8 SYNOPSIS: Under existing law, there is no process for
9 providing secure overseas absentee voting by
10 electronic transmission.

11 This bill would establish the Alabama
12 Electronic Overseas Voting Advisory Committee to
13 determine whether a secure electronic means may be
14 established for use by the Secretary of State in
15 conducting overseas absentee voting.

16 This bill would provide a procedure for the
17 adoption of rules by the committee and the
18 Secretary of State for conducting overseas absentee
19 voting.

20 This bill would provide that the committee
21 and the Secretary of State determine the
22 requirements for a request and the receipt of a
23 request for an overseas absentee ballot, for the
24 return of a voted overseas absentee ballot, for an
25 overseas voter certificate, for the instructions to
26 be included with an overseas absentee ballot, and

1 for the procedures for processing a voted overseas
2 absentee ballot.

3 This bill would also require the Secretary
4 of State to adopt rules specifying emergency
5 overseas absentee voting powers and situations
6 during which those powers may be exercised.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT

11
12 Relating to elections and the provision of secure
13 overseas absentee voting by electronic transmission; to
14 establish the Alabama Electronic Overseas Voting Advisory
15 Committee to determine whether a secure electronic means may
16 be established for use by the Secretary of State to conduct
17 overseas absentee voting; to provide a procedure for the
18 adoption of rules by the committee and the Secretary of State
19 for conducting overseas absentee voting; to require the
20 committee and the Secretary of State to determine the
21 requirements for a request and receipt of an overseas absentee
22 ballot, for the return of a voted overseas absentee ballot,
23 for an overseas voter certificate, for the instructions for
24 voting an overseas absentee ballot, and for the processing of
25 a voted overseas absentee ballot; and to require the Secretary
26 of State to adopt rules regarding emergency overseas absentee

1 voting rule powers and situations during which those powers
2 may be exercised.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. For the purposes of this act, the
5 following terms shall have the following meanings:

6 (1) COMMITTEE. The Alabama Electronic Overseas
7 Voting Advisory Committee.

8 (2) OVERSEAS VOTER. Includes all of the following:

9 a. A member of the uniformed services while in the
10 active service, or an eligible spouse or dependent of such a
11 member, who is a permanent resident of the state and is
12 temporarily residing outside of the territorial limits of the
13 United States and the District of Columbia, who is qualified
14 and registered to vote as provided by law.

15 b. A member of the Merchant Marine of the United
16 States, or an eligible spouse or dependent of such a member,
17 who is a permanent resident of the state and is temporarily
18 residing outside of the territorial limits of the United
19 States and the District of Columbia, who is qualified and
20 registered to vote as provided by law.

21 c. Any other citizen of the United States who is a
22 permanent resident of the state and is temporarily residing
23 outside of the territorial limits of the United States and the
24 District of Columbia, who is qualified and registered to vote
25 as provided by law.

26 Section 2. (a) The Alabama Electronic Overseas
27 Voting Advisory Committee is created to determine whether

1 secure electronic means may be established for conducting
2 absentee voting for overseas voters and to advise and assist
3 the office of the Secretary of State in the establishment,
4 testing, and implementation of absentee overseas balloting by
5 secure electronic means.

6 (b) The membership of the committee shall include
7 all of the following:

8 (1) The Secretary of State as chair.

9 (2) A representative of the Alabama Sheriff's
10 Association appointed by that association.

11 (3) A representative of the Alabama Probate Judge's
12 Association appointed by that association.

13 (4) A representative of the Alabama Circuit Clerks
14 Association appointed by that association.

15 (5) A representative of the Alabama National Guard
16 appointed by the Adjutant General.

17 (6) The Chair of the Senate Constitution, Campaign
18 Finance, Ethics, and Elections Committee.

19 (7) The Chair of the House Constitution and
20 Elections Committee.

21 (8) A representative of the county boards of
22 registrars appointed by the Secretary of State.

23 (9) A representative of the Association of County
24 Commissions of Alabama appointed by that association

25 (10) One person appointed by the Governor.

26 (11) One person appointed by the Attorney General.

1 (12) The Director of the Alabama State Department of
2 Veterans Affairs.

3 (13) The Executive Director of the Veterans of
4 Foreign Wars for the State of Alabama.

5 (c) The membership of the committee shall be
6 inclusive and reflect the racial, gender, geographic,
7 urban/rural, and economic diversity of the state. The
8 committee shall annually report to the Legislature by the
9 second legislative day of each regular session the extent to
10 which the committee has complied with the diversity provisions
11 provided for in this act. Members of the committee shall be
12 appointed within 30 days after the effective date of this act
13 and shall serve without compensation but shall be eligible for
14 reimbursement for necessary and reasonable expenses incurred
15 in the performance of their official duties.

16 (d) The chair of the committee shall convene an
17 organizational meeting of the committee within 45 days after
18 the effective date of this act.

19 (e) For the purposes of this committee, eight
20 members present at a meeting shall constitute a quorum.

21 Section 3. (a) If the committee determines a secure
22 electronic means may be established for conducting overseas
23 absentee voting, the Secretary of State shall promulgate rules
24 proposed by the committee to provide that option to eligible
25 overseas voters. The Secretary of State may veto any rule
26 proposed by the committee, may resubmit any vetoed proposed
27 rule to the committee, and may provide an alternative rule for

1 consideration by the committee. In the event that the
2 Secretary of State and the committee are unable to jointly
3 recommend a rule, or are unable to agree on a rule, the
4 Secretary of State shall submit both the proposed rule of the
5 committee and the proposed rule of the Secretary of State to
6 the Joint Committee on Administrative Regulation Review for
7 comment. The Joint Committee on Administrative Regulation
8 Review, after review, shall return the proposed rules, with
9 comments, to the Secretary of State. The Secretary of State
10 shall proceed to adopt a rule pursuant to the Alabama
11 Administrative Procedure Act. The rules for conducting
12 overseas absentee voting by secure remote electronic
13 transmission shall authorize the absentee election manager, as
14 defined in Section 17-11-2, Code of Alabama 1975, to accept
15 requests for absentee ballots and voted absentee ballots from
16 overseas voters and provide a process for verifying the
17 identity of a voter, ensuring the security of the
18 transmission, accepting a voted ballot, and recording each
19 ballot received.

20 (b) Before overseas absentee voting may be conducted
21 pursuant to this act, the committee, among other factors,
22 shall consider all of the following:

23 (1) A timetable and process for notifying eligible
24 overseas voters of the availability of voting an absentee
25 ballot by secure remote electronic transmission.

1 (2) Detailed instructions to be given eligible
2 overseas voters regarding voting by secure remote electronic
3 transmission.

4 (3) A timetable for the conduct of elections
5 utilizing the electronic transmission of absentee ballots.

6 (4) A method of providing blank ballots to overseas
7 voters.

8 (5) A method and criteria for returning overseas
9 voted absentee ballots to the absentee election manager.

10 (6) Procedures for ensuring the physical security of
11 the remote voting site for receipt and transmission of blank
12 and voted absentee ballots.

13 (c) Pursuant to subsection (a), the Secretary of
14 State, by rule adopted pursuant to the Alabama Administrative
15 Procedure Act, shall establish minimum criteria to ensure the
16 secure remote electronic transmission of election materials
17 including, but not limited to:

18 (1) The use of encrypted information, including, but
19 not limited to, ballots, passwords, and both public and
20 private encryption keys.

21 a. A public or private key encryption methodology
22 shall include key generation under the control of the
23 Secretary of State.

24 b. A password protected private key shall be held
25 secure by the county appointing board and never transmitted or
26 otherwise divulged by any means.

1 c. A password protected private key that is unique
2 for each eligible overseas voter to digitally sign the ballot
3 for transmission and storage before decryption by the
4 canvassing board.

5 (2) The capability for auditing the secure remote
6 voting application source code, and the capability for this
7 application to be executed on a clean computer which, at a
8 minimum, has a baseline operating system on its hard disk and
9 no other software or driver installed.

10 (3) The capability to secure access to and from the
11 overseas voter and the voting server or the voting database
12 platform, or both.

13 (4) The verification of the authenticity of the
14 identity of the overseas voter before granting access to the
15 transmission of election material.

16 (5) The capability for the overseas voter to
17 determine that the secure transmission of election material
18 was successful.

19 (6) The capability for the absentee election manager
20 to segregate rejected ballots before decryption.

21 (7) The capability to record election material
22 received by secure transmission.

23 (8) The capability for the absentee election manager
24 to produce a marked paper ballot for each vote cast by secure
25 transmission.

26 Section 4. (a) In determining the requirements for a
27 request for an overseas absentee ballot, the committee and the

1 Secretary of State shall consider including the following
2 information:

3 (1) The name of the voter requesting the ballot.

4 (2) The legal Alabama residence of the voter.

5 (3) The date of birth of the voter.

6 (4) One of the following:

7 a. An APO/FPO or other deliverable overseas address,
8 if the overseas voter requests that the ballot be mailed or
9 sent by commercial ground or air carrier.

10 b. A facsimile machine number where return
11 information shall be received, if the overseas voter requests
12 that the ballot be faxed. If the voter requests facsimile
13 transmission, his or her signature is also required.

14 c. An electronic mail address, if the overseas voter
15 requests that the ballot be transmitted pursuant to electronic
16 mail.

17 d. A signed application for an electronic ballot if
18 the overseas voter requests that the ballot be transmitted or
19 accessed by other secure electronic means approved by rule of
20 the Secretary of State.

21 (b) A request for a ballot to be faxed to an
22 overseas voter shall remain valid for 12 months, unless a
23 shorter length of time is requested by the overseas voter.

24 (c) The absentee election manager and the staff of
25 the absentee election manager shall ensure the confidentiality
26 of all voted ballots, including voted ballots received by
27 facsimile.

1 Section 5. In determining the requirements for
2 receipt of a request for an overseas absentee ballot, the
3 committee and the Secretary of State shall consider
4 verification by the absentee election manager of the
5 information provided, a determination that the overseas voter
6 is qualified and registered to vote in the election, and the
7 provision of:

8 (1) An absentee ballot.

9 (2) Instructions for voting.

10 (3) Instructions for returning the voted ballot.

11 (4) An overseas voter certificate.

12 Section 6. The committee and the Secretary of State
13 shall determine the procedures whereby an overseas voter may
14 return a voted ballot.

15 Section 7. In determining the requirements for an
16 overseas voter certificate, the committee and the Secretary of
17 State shall consider including information including the
18 following:

19 "OVERSEAS VOTER CERTIFICATE

20 "I, _____ (print name), swear or affirm,
21 under penalty of perjury, that:

22 "1. I am a member of the uniformed services or
23 Merchant Marine on active duty temporarily residing outside
24 the United States; or the eligible spouse or dependent of such
25 a member temporarily residing outside the United States; or a
26 United States citizen temporarily residing outside the United
27 States; and

1 "2. I am a United States citizen, at least 18 years
2 of age, as of the date of the applicable election, and
3 eligible to vote in the requested jurisdiction; and

4 "3. I have not been convicted of a disqualifying
5 felony or been adjudicated mentally incompetent or, if I have,
6 my voting rights have been reinstated; and

7 "4. I am not registering, requesting a ballot, or
8 voting in any other jurisdiction in the United States, except
9 the jurisdiction cited in this voting form.

10 "In voting, I have marked and sealed my ballot in
11 private and have not allowed any person to observe my marking
12 of the ballot, except for those authorized to assist overseas
13 voters under state or federal law. I have not been influenced
14 in marking my ballot. My signature and date below indicate
15 when I completed this certificate. The information on this
16 form is true, accurate, and complete to the best of my
17 knowledge. I understand that a material misstatement of fact
18 in completion of this document may constitute grounds for a
19 conviction for perjury.

20 "Signed: _____ Date:

21 _____"

22 Section 8. The committee and the Secretary of State
23 may draft instructions to be included when an absentee ballot
24 is sent to an overseas voter, including, but not limited to,
25 the following instructions:

26 "(1) To ensure that your absentee ballot is counted,
27 it should be completed and returned to the absentee election

1 manager of the county of registration as soon as possible, and
2 not later than 12:00 noon on the day of the election.

3 "(2) The ballot should be marked in secret.

4 "(3) Only the number of candidates or issue choices
5 indicated on the ballot should be marked. If the ballot
6 instructs a voter to "vote for one" candidate, and you vote
7 for more than one candidate, your vote in that race will not
8 be counted.

9 "(4) For your ballot to be counted, you must also
10 complete an overseas voter certificate, which includes your
11 signature. Failure to include your signature will result in
12 your ballot not being counted.

13 "(5) An overseas voted absentee ballot may be
14 returned to the absentee election manager by facsimile, mail,
15 commercial ground or air carrier, or secure remote electronic
16 access, if such option is approved by the Secretary of State.
17 An overseas voted absentee ballot returned by standard
18 electronic mail shall be rejected.

19 "(6) If faxed, the voted absentee ballot and
20 overseas voter certificate shall be faxed to the number
21 provided by the absentee election manager or to a facsimile
22 number provided by the Federal Voting Assistance Program of
23 the Department of Defense. If the ballot and certificate are
24 faxed to the number provided by the Federal Voting Assistance
25 Program, the voter should ensure that there is sufficient time
26 for the Federal Voting Assistance Program to transmit the
27 ballot and certificate to the absentee election manager so

1 that it is received no later than 12:00 noon on election day.
2 By faxing a voted ballot, the voter voluntarily waives his or
3 her right to a secret ballot.

4 "(7) If mailed, the voted absentee ballot and
5 overseas voter certificate shall be mailed to the absentee
6 election manager as follows:

7 "a. Place the voted ballot in a sealed secrecy
8 envelope, which may have been provided in the original mailing
9 of the ballot by the absentee election manager. Anyone who has
10 received his or her unmarked ballot by facsimile or electronic
11 mail may place his or her voted ballot in an unmarked envelope
12 and seal the envelope.

13 "b. Insert the secrecy envelope inside a separate
14 mailing envelope. If the ballot was mailed to you, use the
15 mailing envelope provided and fill out the overseas voter
16 certificate on the back of the mailing envelope. If the ballot
17 was faxed to you or sent by electronic mail, place the sealed
18 secrecy envelope and the completed overseas voter certificate
19 in another envelope for mailing. Do not seal the overseas
20 voter certificate in the secrecy envelope with the ballot. The
21 mailing envelope should be clearly marked "Absentee Ballot
22 Enclosed."

23 "c. Mail the absentee ballot to the absentee
24 election manager with sufficient postage.

25 "(8) To vote and transmit a voted absentee ballot
26 and overseas voter certificate by secure remote electronic
27 access, carefully follow the supplemental instructions given

1 to you by the absentee election manager to ensure that your
2 ballot will be counted.

3 "(9) It is a crime under Alabama law to accept any
4 gift, payment, or gratuity in exchange for your vote for a
5 candidate. It is also a crime under Alabama law to vote in an
6 election using a false identity or false address, or under any
7 other circumstances making your ballot false or fraudulent."

8 Section 9. The committee and the Secretary of State
9 shall determine the procedures to be followed for the
10 processing of voted absentee ballots received from eligible
11 overseas voters.

12 Section 10. (a) If a national or local emergency or
13 other situation arises that makes substantial compliance with
14 this act impossible or unreasonable, such as a natural
15 disaster or an armed conflict involving the Armed Forces of
16 the United States, or mobilization of those forces including
17 state National Guard and state reserve components, the
18 Secretary of State may prescribe, by emergency orders or
19 rules, any special procedures or requirements necessary to
20 facilitate absentee voting by those directly affected
21 uniformed services or overseas voters who are eligible to vote
22 in this state.

23 (b) The Secretary of State shall adopt emergency
24 rules under this section pursuant to the emergency rule
25 requirements of Section 41-22-5(b) of the Code of Alabama
26 1975.

1 Section 11. Notwithstanding any other laws to the
2 contrary, all expenses and costs incurred by the state or any
3 county commission in carrying out the responsibilities and
4 duties required in this act shall be paid by the State of
5 Alabama. All costs associated with this act shall be drawn
6 from funds made available to the Secretary of State under
7 state and federal law to pay all such expenses and costs in
8 all counties regardless of whether a state elective office or
9 referendum appears on the ballot in a particular county.

10 Section 12. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.