

1 HB176
2 126790-2
3 By Representative Johnson (R)
4 RFD: Constitution, Campaigns and Elections
5 First Read: 08-MAR-11

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

3 (1) COMMITTEE. The Alabama Electronic Overseas
4 Voting Advisory Committee.

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

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

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

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

23 Section 2. (a) The Alabama Electronic Overseas
24 Voting Advisory Committee is created to determine whether
25 secure electronic means may be established for conducting
26 absentee voting for overseas voters and to advise and assist

1 the office of the Secretary of State in the establishment,
2 testing, and implementation of absentee overseas balloting by
3 secure electronic means.

4 (b) The membership of the committee shall include
5 all of the following:

6 (1) The Secretary of State as chair.

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

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

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

13 (5) A representative of the Alabama National Guard
14 appointed by the Adjutant General.

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

17 (7) The Chair of the House Constitution and
18 Elections Committee.

19 (8) A representative of the county boards of
20 registrars appointed by the Secretary of State.

21 (9) A representative of the Association of County
22 Commissions of Alabama appointed by that association

23 (10) One person appointed by the Governor.

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

25 (12) The Director of the Alabama State Department of
26 Veterans Affairs.

1 (13) The Executive Director of the Veterans of
2 Foreign Wars for the State of Alabama.

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

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

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

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

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

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

22 (1) A timetable and process for notifying eligible
23 overseas voters of the availability of voting an absentee
24 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.

1 Section 4. (a) In determining the requirements for a
2 request for an overseas absentee ballot, the committee and the
3 Secretary of State shall consider including the following
4 information:

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

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

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

8 (4) One of the following:

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

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

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

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

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

1 (c) The absentee election manager and the staff of
2 the absentee election manager shall ensure the confidentiality
3 of all voted ballots, including voted ballots received by
4 facsimile.

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

- 12 (1) An absentee ballot.
- 13 (2) Instructions for voting.
- 14 (3) Instructions for returning the voted ballot.
- 15 (4) An overseas voter certificate.

16 Section 6. The committee and the Secretary of State
17 shall determine the procedures whereby an overseas voter may
18 return a voted ballot.

19 Section 7. In determining the requirements for an
20 overseas voter certificate, the committee and the Secretary of
21 State shall consider including information including the
22 following:

23 "OVERSEAS VOTER CERTIFICATE

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

1 "1. I am a member of the uniformed services or
2 Merchant Marine on active duty temporarily residing outside
3 the United States; or the eligible spouse or dependent of such
4 a member temporarily residing outside the United States; or a
5 United States citizen temporarily residing outside the United
6 States; and

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

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

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

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

1 "Signed: _____ Date:

2 _____"

3 Section 8. The committee and the Secretary of State
4 may draft instructions to be included when an absentee ballot
5 is sent to an overseas voter, including, but not limited to,
6 the following instructions:

7 "(1) To ensure that your absentee ballot is counted,
8 it should be completed and returned to the absentee election
9 manager of the county of registration as soon as possible, and
10 not later than 12:00 noon on the day of the election.

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

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

17 "(4) For your ballot to be counted, you must also
18 complete an overseas voter certificate, which includes your
19 signature. Failure to include your signature will result in
20 your ballot not being counted.

21 "(5) An overseas voted absentee ballot may be
22 returned to the absentee election manager by facsimile, mail,
23 commercial ground or air carrier, or secure remote electronic
24 access, if such option is approved by the Secretary of State.
25 An overseas voted absentee ballot returned by standard
26 electronic mail shall be rejected.

1 "(6) If faxed, the voted absentee ballot and
2 overseas voter certificate shall be faxed to the number
3 provided by the absentee election manager or to a facsimile
4 number provided by the Federal Voting Assistance Program of
5 the Department of Defense. If the ballot and certificate are
6 faxed to the number provided by the Federal Voting Assistance
7 Program, the voter should ensure that there is sufficient time
8 for the Federal Voting Assistance Program to transmit the
9 ballot and certificate to the absentee election manager so
10 that it is received no later than 12:00 noon on election day.
11 By faxing a voted ballot, the voter voluntarily waives his or
12 her right to a secret ballot.

13 "(7) If mailed, the voted absentee ballot and
14 overseas voter certificate shall be mailed to the absentee
15 election manager as follows:

16 "a. Place the voted ballot in a sealed secrecy
17 envelope, which may have been provided in the original mailing
18 of the ballot by the absentee election manager. Anyone who has
19 received his or her unmarked ballot by facsimile or electronic
20 mail may place his or her voted ballot in an unmarked envelope
21 and seal the envelope.

22 "b. Insert the secrecy envelope inside a separate
23 mailing envelope. If the ballot was mailed to you, use the
24 mailing envelope provided and fill out the overseas voter
25 certificate on the back of the mailing envelope. If the ballot
26 was faxed to you or sent by electronic mail, place the sealed

1 secrecy envelope and the completed overseas voter certificate
2 in another envelope for mailing. Do not seal the overseas
3 voter certificate in the secrecy envelope with the ballot. The
4 mailing envelope should be clearly marked "Absentee Ballot
5 Enclosed."

6 "c. Mail the absentee ballot to the absentee
7 election manager with sufficient postage.

8 "(8) To vote and transmit a voted absentee ballot
9 and overseas voter certificate by secure remote electronic
10 access, carefully follow the supplemental instructions given
11 to you by the absentee election manager to ensure that your
12 ballot will be counted.

13 "(9) It is a crime under Alabama law to accept any
14 gift, payment, or gratuity in exchange for your vote for a
15 candidate. It is also a crime under Alabama law to vote in an
16 election using a false identity or false address, or under any
17 other circumstances making your ballot false or fraudulent."

18 Section 9. The committee and the Secretary of State
19 shall determine the procedures to be followed for the
20 processing of voted absentee ballots received from eligible
21 overseas voters.

22 Section 10. (a) The Secretary of State is granted
23 authority to adopt requirements related to witnessing or
24 notarization of absentee ballots, voter identification,
25 candidate qualifying, and ballot access procedures, ballot
26 printing, and the application process for absentee balloting

1 in elections for federal, state, county, and municipal offices
2 and constitutional amendments and other referenda to comply
3 with federal law.

4 (b) The Secretary of State is authorized to extend
5 the deadline for receiving, processing, and counting absentee
6 ballots if absentee ballots are transmitted to qualified
7 absentee voters less than the minimum number of days prior to
8 an election as required by federal law. Absentee election
9 officials utilized for the processing and counting of absentee
10 ballots pursuant to this section shall be appointed in the
11 manner prescribed in Section 17-11-11 of the Code of Alabama
12 1975, and compensated as provided in Section 17-8-12 of the
13 Code of Alabama 1975.

14 Section 11. (a) If a national or local emergency or
15 other situation arises that makes substantial compliance with
16 this act impossible or unreasonable, such as a natural
17 disaster or an armed conflict involving the Armed Forces of
18 the United States, or mobilization of those forces including
19 state National Guard and state reserve components, the
20 Secretary of State may prescribe, by emergency orders or
21 rules, any special procedures or requirements necessary to
22 facilitate absentee voting by those directly affected
23 uniformed services or overseas voters who are eligible to vote
24 in this state.

25 (b) The Secretary of State shall adopt emergency
26 rules under this section pursuant to the emergency rule

1 requirements of Section 41-22-5(b) of the Code of Alabama
2 1975.

3 Section 12. Notwithstanding any other laws to the
4 contrary, all expenses and costs incurred by the state or any
5 county commission in carrying out the responsibilities and
6 duties required in this act shall be paid by the State of
7 Alabama. All costs associated with this act shall be drawn
8 from funds made available to the Secretary of State under
9 state and federal law to pay all such expenses and costs in
10 all counties regardless of whether a state elective office or
11 referendum appears on the ballot in a particular county.

12 Section 13. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Constitution,
Campaigns and Elections..... 08-MAR-11

Read for the second time and placed
on the calendar 1 amendment 31-MAR-11

Read for the third time and passed
as amended..... 07-APR-11

Yeas 95, Nays 0, Abstains 0

Greg Pappas
Clerk