

1 SB78  
2 156058-3  
3 By Senator Ward  
4 RFD: Constitution, Campaign Finance, Ethics, and Elections  
5 First Read: 14-JAN-14  
6 PFD: 01/08/2014

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to municipal elections conducted pursuant  
12 to Chapter 46 of Title 11, Code of Alabama 1975; to amend  
13 Section 11-46-26, Code of Alabama 1975, to provide that when a  
14 candidate's withdrawal results in only one person remaining as  
15 a candidate for office, then the remaining candidate would be  
16 deemed elected to the office; to amend Section 11-46-32, Code  
17 of Alabama 1975, to change the deadline requirement for  
18 delivery of absentee election supplies from 21 days to 35 days  
19 prior to the election date; to amend Section 11-46-33, Code of  
20 Alabama 1975, to distinguish the term voting machines from  
21 electronic vote counting systems as defined in Title 17, Code  
22 of Alabama 1975; and to amend Section 11-46-55, Code of  
23 Alabama 1975, to provide the procedure to establish the winner  
24 of a municipal election in the event of a tie after the runoff  
25 election.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Sections 11-46-26, 11-46-32, 11-46-33,  
2 and 11-46-55, Code of Alabama 1975, are amended to read as  
3 follows:

4           "§11-46-26.

5           "In the event only one person has filed a statement  
6 of candidacy for an office by 5:00 P.M. on the third Tuesday  
7 in July preceding the date set for an election of municipal  
8 officers pursuant to subsection (g) of Section 11-46-25, or in  
9 the event all candidates withdraw or are deemed withdrawn  
10 leaving only one remaining candidate for office, then ~~such~~  
11 that person shall for all purposes be deemed elected to ~~such~~  
12 the office, any provisions of this article to the contrary  
13 notwithstanding. The mayor or other chief executive officer  
14 shall not cause the name of ~~such~~ the person or the office for  
15 which his or her candidacy was declared to be printed on the  
16 ballot, but ~~he~~ the mayor or other chief executive officer  
17 shall immediately file a written statement with the governing  
18 body of the municipality, attested by the clerk, certifying  
19 the fact that only one person filed a statement of candidacy  
20 for the office of \_\_\_\_\_ (naming the office) by 5:00 P.M. on  
21 the third Tuesday in July preceding the day of \_\_\_\_\_, 2\_\_, the  
22 date set for an election of municipal officers in the City  
23 (Town) of \_\_\_\_\_, Alabama, or that only one candidate remains  
24 due to the withdrawal of all other candidates and setting  
25 forth the name of ~~such~~ the person deemed elected to office. At  
26 its first regular meeting after receiving ~~such~~ the statement  
27 the governing body of the municipality shall adopt a

1 resolution declaring the person named in the statement duly  
2 elected to the office described in the statement and shall  
3 issue a certificate of election to ~~such~~ the person. For the  
4 purpose of this article, each place on the council of a  
5 municipality organized under the mayor-council form of  
6 government shall be considered a separate office.

7 "§11-46-32.

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

24 "(b) When paper ballots are used, such supplies  
25 shall consist of: At least 100 ballots for each 50 registered  
26 electors at each voting place; the same number of black seals,  
27 two inches square, around the outer edge of which is a

1 mucilaginous surface one-fourth inch wide, so designed that a  
2 seal may be placed securely over the square bearing the ballot  
3 number in such manner that it will make it impossible to read  
4 such number without removing the seal yet such seal may be  
5 removed without obliterating the number; ballot boxes; blank  
6 poll lists; three or more cards of instructions to voters for  
7 each ward or voting district, which shall be printed in large  
8 clear type and shall contain full instructions to electors as  
9 to what should be done, first, to obtain ballots for voting,  
10 second, to prepare the ballot for deposit in the ballot box,  
11 third, to obtain a new ballot in place of one accidentally  
12 spoiled and, fourth, to obtain a watcher for each candidate to  
13 be voted for; certificates of results; oaths; and any other  
14 stationery, blank forms, or supplies necessary in the conduct  
15 of the election.

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

26 "§11-46-33.

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

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

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

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

10           "(4) See that all the registering counters are set  
11 at zero;

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

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

20           "(b) The inspection and sealing of voting machines  
21 shall begin not later than 9:00 A.M., of the Monday before any  
22 election at which such machines are to be used and shall  
23 continue until all machines are sealed. When all machines are  
24 locked and sealed, the key to each machine shall be placed in  
25 an envelope and sealed, the signature of the municipal clerk  
26 and the signature of two watchers of opposed interest (if such  
27 there shall be) shall be placed across the seal, and on the

1 envelope shall be written the number then on the protective  
2 counter and the number on the seal of the voting machines.  
3 This envelope shall be delivered to the election inspector who  
4 will serve as an election officer at the polling place where  
5 such machine is used.

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

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

24 "§11-46-55.

25 "(a) Commencing at 12:00 noon on the first Tuesday  
26 next after the election, the municipal governing body shall  
27 proceed to open the envelopes addressed to the governing body

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

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



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

15           "(d) If no candidate receives a majority of all the  
16 votes cast in such election for any one office or offices for  
17 the election to which there were more than two candidates,  
18 then the municipal governing body shall order a second or  
19 runoff election to be held on the sixth Tuesday next  
20 thereafter following the regular election, at which election  
21 the two candidates having received the most and the second  
22 most votes, respectively, shall be candidates, and the person  
23 receiving the highest number of votes for that office in the  
24 runoff election shall be declared elected. If only two  
25 candidates are standing for election for any one office or  
26 offices and neither candidate receives a majority, then the  
27 municipal governing body shall order a second or runoff

1 election to be held on the sixth Tuesday next thereafter  
2 following the regular election, at which election the two  
3 candidates shall be candidates, and the person receiving the  
4 highest number of votes for that office in the runoff election  
5 shall be declared elected. In the event one of the candidates  
6 for a particular office in the runoff election withdraws, then  
7 there need not be a second election to fill the office nor  
8 shall the name of either the party so withdrawing or the  
9 remaining candidate be printed on the ballot of any second  
10 election held under this article. This second election shall  
11 be held by the same election officers who held the first  
12 election and at the same places the first election was held.  
13 If there should be a tie vote cast at any runoff election,  
14 then in that event the tie shall be decided by the municipal  
15 governing body no later than 12:00 noon on the first Tuesday  
16 following the second or runoff election. A vote for a  
17 particular candidate by a majority of those members eligible  
18 to vote of the governing body shall be necessary to decide the  
19 election in his or her favor. If the municipal governing body  
20 fails to break the tie, the elected candidate shall be decided  
21 by lot by the judge of probate of the county no later than  
22 5:00 P.M. on the first Tuesday following the second or runoff  
23 election in the presence of the candidates and other electors  
24 who choose to be present. The municipal clerk shall file a  
25 copy of each certificate of election in the office of the  
26 judge of probate of the county in which the city or town is  
27 situated, and the judge shall file the certificate in the same

1 manner that he or she files the declaration of the result of  
2 elections to county offices."

3 Section 2. This act shall become effective  
4 immediately following its passage and approval by the  
5 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Constitution, Campaign Finance, Eth-  
ics, and Elections..... 14-JAN-14

Read for the second time and placed on the calen-  
dar 2 amendments..... 06-FEB-14

Read for the third time and passed as amended .... 06-MAR-14

Yeas 30  
Nays 0

Patrick Harris  
Secretary