

1 HB30
2 113806-1
3 By Representative Martin
4 RFD: Constitution and Elections
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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 Speaker of the
27 House of Representatives.

1 (12) One person appointed by the President Pro
2 Tempore of the Senate.

3 (13) One person appointed by the Attorney General.

4 (14) One person appointed by the majority caucus of
5 the House of Representatives.

6 (15) One person appointed by the majority caucus of
7 the Senate.

8 (16) One person appointed by the minority caucus of
9 the House of Representatives.

10 (17) One person appointed by the minority caucus of
11 the Senate.

12 (18) One person appointed by the black caucus of the
13 House of Representatives.

14 (19) One person appointed by the black caucus of the
15 Senate.

16 (20) One person appointed by the state Democratic
17 party.

18 (21) One person appointed by the state Republican
19 party.

20 (22) The Director of the Alabama State Department of
21 Veterans Affairs.

22 (23) The Executive Director of the Veterans of
23 Foreign Wars for the State of Alabama.

24 (c) The membership of the committee shall be
25 inclusive and reflect the racial, gender, geographic,
26 urban/rural, and economic diversity of this state. Members of
27 the committee shall be appointed within 30 days after the

1 effective date of this act and shall serve without
2 compensation but shall be eligible for reimbursement for
3 necessary and reasonable expenses incurred in the performance
4 of their official duties.

5 (d) The chair of the committee shall convene an
6 organizational meeting of the committee within 45 days after
7 the effective date of this act.

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

10 Section 3. (a) If the committee determines a secure
11 electronic means may be established for conducting overseas
12 absentee voting, the Secretary of State shall promulgate rules
13 proposed by the committee to provide that option to eligible
14 overseas voters. The Secretary of State may veto any rule
15 proposed by the committee, may resubmit any vetoed proposed
16 rule to the committee, and may provide an alternative rule for
17 consideration by the committee. In the event that the
18 Secretary of State and the committee are unable to jointly
19 recommend a rule, or are unable to agree on a rule, the
20 Secretary of State shall submit both the proposed rule of the
21 committee and the proposed rule of the Secretary of State to
22 the Joint Committee on Administrative Regulation Review for
23 comment. The Joint Committee on Administrative Regulation
24 Review, after review, shall return the proposed rules, with
25 comments, to the Secretary of State. The Secretary of State
26 shall proceed to adopt a rule pursuant to the Alabama
27 Administrative Procedure Act. The rules for conducting

1 overseas absentee voting by secure remote electronic
2 transmission shall authorize the absentee election manager, as
3 defined in Section 17-11-2, Code of Alabama 1975, to accept
4 requests for absentee ballots and voted absentee ballots from
5 overseas voters and provide a process for verifying the
6 identity of a voter, ensuring the security of the
7 transmission, accepting a voted ballot, and recording each
8 ballot received.

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

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

15 (2) Detailed instructions to be given eligible
16 overseas voters regarding voting by secure remote electronic
17 transmission.

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

20 (4) A method of providing blank ballots to overseas
21 voters.

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

24 (6) Procedures for ensuring the physical security of
25 the remote voting site for receipt and transmission of blank
26 and voted absentee ballots.

1 (c) Pursuant to subsection (a), the Secretary of
2 State, by rule adopted pursuant to the Alabama Administrative
3 Procedure Act, shall establish minimum criteria to ensure the
4 secure remote electronic transmission of election materials
5 including, but not limited to:

6 (1) The use of encrypted information, including, but
7 not limited to, ballots, passwords, and both public and
8 private encryption keys.

9 a. A public or private key encryption methodology
10 shall include key generation under the control of the
11 Secretary of State.

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

15 c. A password protected private key that is unique
16 for each eligible overseas voter to digitally sign the ballot
17 for transmission and storage before decryption by the
18 canvassing board.

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

24 (3) The capability to secure access to and from the
25 overseas voter and the voting server or the voting database
26 platform, or both.

1 (4) The verification of the authenticity of the
2 identity of the overseas voter before granting access to the
3 transmission of election material.

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

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

9 (7) The capability to record election material
10 received by secure transmission.

11 (8) The capability for the absentee election manager
12 to produce a marked paper ballot for each vote cast by secure
13 transmission.

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

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

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

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

21 (4) One of the following:

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

25 b. A facsimile machine number where return
26 information shall be received, if the overseas voter requests

1 that the ballot be faxed. If the voter requests facsimile
2 transmission, his or her signature is also required.

3 c. An electronic mail address, if the overseas voter
4 requests that the ballot be transmitted pursuant to electronic
5 mail.

6 d. A signed application for an electronic ballot if
7 the overseas voter requests that the ballot be transmitted or
8 accessed by other secure electronic means approved by rule of
9 the Secretary of State.

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

13 (c) The absentee election manager and the staff of
14 the absentee election manager shall ensure the confidentiality
15 of all voted ballots, including voted ballots received by
16 facsimile.

17 Section 5. In determining the requirements for
18 receipt of a request for an overseas absentee ballot, the
19 committee and the Secretary of State shall consider
20 verification by the absentee election manager of the
21 information provided, a determination that the overseas voter
22 is qualified and registered to vote in the election, and the
23 provision of:

24 (1) An absentee ballot.

25 (2) Instructions for voting.

26 (3) Instructions for returning the voted ballot.

27 (4) An overseas voter certificate.

1 Section 6. The committee and the Secretary of State
2 shall determine the procedures whereby an overseas voter may
3 return a voted ballot.

4 Section 7. In determining the requirements for an
5 overseas voter certificate, the committee and the Secretary of
6 State shall consider including information including the
7 following:

8 "OVERSEAS VOTER CERTIFICATE

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

11 "1. I am a member of the uniformed services or
12 Merchant Marine on active duty temporarily residing outside
13 the United States; or the eligible spouse or dependent of such
14 a member temporarily residing outside the United States; or a
15 United States citizen temporarily residing outside the United
16 States; and

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

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

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

26 "In voting, I have marked and sealed my ballot in
27 private and have not allowed any person to observe my marking

1 of the ballot, except for those authorized to assist overseas
2 voters under state or federal law. I have not been influenced
3 in marking my ballot. My signature and date below indicate
4 when I completed this certificate. The information on this
5 form is true, accurate, and complete to the best of my
6 knowledge. I understand that a material misstatement of fact
7 in completion of this document may constitute grounds for a
8 conviction for perjury.

9 "Signed: _____ Date:

10 _____"

11 Section 8. The committee and the Secretary of State
12 may draft instructions to be included when an absentee ballot
13 is sent to an overseas voter, including, but not limited to,
14 the following instructions:

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

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

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

25 "(4) For your ballot to be counted, you must also
26 complete an overseas voter certificate, which includes your

1 signature. Failure to include your signature will result in
2 your ballot not being counted.

3 "(5) An overseas voted absentee ballot may be
4 returned to the absentee election manager by facsimile, mail,
5 commercial ground or air carrier, or secure remote electronic
6 access, if such option is approved by the Secretary of State.
7 An overseas voted absentee ballot returned by standard
8 electronic mail shall be rejected.

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

21 "(7) If mailed, the voted absentee ballot and
22 overseas voter certificate shall be mailed to the absentee
23 election manager as follows:

24 "a. Place the voted ballot in a sealed secrecy
25 envelope, which may have been provided in the original mailing
26 of the ballot by the absentee election manager. Anyone who has
27 received his or her unmarked ballot by facsimile or electronic

1 mail may place his or her voted ballot in an unmarked envelope
2 and seal the envelope.

3 "b. Insert the secrecy envelope inside a separate
4 mailing envelope. If the ballot was mailed to you, use the
5 mailing envelope provided and fill out the overseas voter
6 certificate on the back of the mailing envelope. If the ballot
7 was faxed to you or sent by electronic mail, place the sealed
8 secrecy envelope and the completed overseas voter certificate
9 in another envelope for mailing. Do not seal the overseas
10 voter certificate in the secrecy envelope with the ballot. The
11 mailing envelope should be clearly marked "Absentee Ballot
12 Enclosed."

13 "c. Mail the absentee ballot to the absentee
14 election manager with sufficient postage.

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

20 "(9) It is a crime under Alabama law to accept any
21 gift, payment, or gratuity in exchange for your vote for a
22 candidate. It is also a crime under Alabama law to vote in an
23 election using a false identity or false address, or under any
24 other circumstances making your ballot false or fraudulent."

25 Section 9. The committee and the Secretary of State
26 shall determine the procedures to be followed for the

1 processing of voted absentee ballots received from eligible
2 overseas voters.

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

14 (b) The Secretary of State shall adopt emergency
15 rules under this section pursuant to the emergency rule
16 requirements of Section 41-22-5(b) of the Code of Alabama
17 1975.

18 Section 11. Notwithstanding any other laws to the
19 contrary, all expenses and costs incurred by the state or any
20 county commission in carrying out the responsibilities and
21 duties required in this act shall be paid by the State of
22 Alabama. All costs associated with this act shall be drawn
23 from funds made available to the Secretary of State under
24 state and federal law to pay all such expenses and costs in
25 all counties regardless of whether a state elective office or
26 referendum appears on the ballot in a particular county.

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