

1 HB404  
2 127453-2  
3 By Representative Newton (C)  
4 RFD: Constitution, Campaigns and Elections  
5 First Read: 31-MAR-11

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8 SYNOPSIS: Under existing law, write-in votes are  
9 permitted only in non-municipal general elections.  
10 This bill would require that in order to have a  
11 write-in vote counted, the voter must write the  
12 name on the ballot and register the vote by a mark  
13 in the space designated for that particular office.

14 This bill would require that a write-in  
15 candidate be registered with the Secretary of State  
16 or the judge of probate as an official write-in  
17 candidate and comply with the provisions of the  
18 Fair Campaign Practices Act and the State Ethics  
19 Law in order to have his or her vote counted and  
20 would provide for the procedure for counting  
21 write-in votes.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
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1           To amend Section 17-6-28, Code of Alabama 1975,  
2 relating to write-in votes, to require that a write-in  
3 candidate be registered with the Secretary of State or the  
4 judge of probate as an official candidate and comply with the  
5 provisions of the Fair Campaign Practices Act and the State  
6 Ethics Law in order to have votes for him or her counted and  
7 to provide for the procedure for counting write-in votes.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9           Section 1. Section 17-6-28, Code of Alabama 1975, is  
10 amended to read as follows:

11           "§17-6-28.

12           "(a) Write-in votes shall be permitted only in  
13 non-municipal general elections. A write-in candidate shall  
14 register with the Secretary of State or the judge of probate,  
15 as applicable, at least 90 days prior to the election as an  
16 official write-in candidate and shall comply with the Fair  
17 Campaign Practices Act and the State Ethics Law in order to  
18 have votes cast for him or her counted. The ballot must be  
19 constructed so that the voter can mark a write-in vote for  
20 each office in the same manner that votes are registered for  
21 regular candidates. In order to cast a valid write-in vote,  
22 the voter must (1) write the name on the ballot and (2)  
23 register the vote by a mark in the space designated for that  
24 office. A write-in vote shall not be counted if the vote is  
25 not registered as provided above. If a voter registers a vote  
26 for a name on the ballot and then writes in another name for  
27 the same office but fails to register the write-in vote, the

1 ballot shall be treated as if no write-in vote had occurred  
2 and the regular vote shall be counted. If a properly  
3 registered write-in vote causes an over-vote, it shall be  
4 treated as any other over-vote and none of the votes for the  
5 over-voted office shall be counted. However, the remainder of  
6 the ballot shall be counted. When counting write-in votes,  
7 poll officials must check for over-votes if the electronic  
8 ballot counter does not perform the function.

9 "(b) All write-in ballots shall be returned to a  
10 central location in the county as determined by the judge of  
11 probate. All write-in votes for office shall be tabulated by  
12 the judge of probate. The term "tabulated" for the purposes of  
13 this subsection means the initial counting of the total number  
14 of write-in votes for an office. If it is determined that  
15 total write-in votes tabulated for an office cannot affect the  
16 outcome of the election for that office, each individual  
17 write-in vote for that office shall not be finally counted  
18 except as provided herein.

19 "(1) The canvassing board for elections involving  
20 voters in only the county where the canvassing board serves  
21 shall make a determination of whether the tabulated number of  
22 write-in votes for an office can affect the outcome of the  
23 election for an office. If the canvassing board determines  
24 that the tabulated number of write-in votes can affect the  
25 outcome of the election, the individual write-in votes shall  
26 be finally counted. The canvassing board, if needed, may  
27 appoint a suitable number of polling officials to count the

1 ballots. If the canvassing board determines that the total  
2 number of tabulated write-in votes cannot affect the outcome  
3 of the election for the office, the individual write-in votes  
4 for that office shall not be counted, except as provided in  
5 subdivision (3).

6 "(2) For write-in votes for elections involving  
7 voters of more than one county, the judge of probate for each  
8 county where ballots are cast for the office shall forward to  
9 the Secretary of State the number of write-in votes tabulated  
10 for the office. The Secretary of State shall then make a  
11 determination of whether the tabulated number of write-in  
12 votes for the office can affect the outcome of the election  
13 for that office. If the Secretary of State determines that the  
14 tabulated number of write-in votes can affect the outcome of  
15 the election, the individual write-in votes shall be finally  
16 counted. If the Secretary of State determines that the  
17 tabulated number of write-in votes cannot affect the outcome  
18 of the election, the individual write-in votes for the office  
19 shall not be counted, except as provided in subdivision (3).

20 "(3) Any qualified elector in an election may  
21 request within two business days of the election that the  
22 write-in votes for any office be finally counted. The elector  
23 requesting that the write-in votes for an office be finally  
24 counted shall pay the actual costs of the counting."

25 Section 2. This act shall become effective on the  
26 first day of the third month following its passage and  
27 approval by the Governor, or its otherwise becoming law.

