

1 SB55
2 125637-3
3 By Senators Dial, Holley, Taylor, Glover, Williams, Bussman,
4 Scofield, Holtzclaw, Brewbaker, Whatley, Allen, McGill, Orr,
5 Reed, Beason, Sanford, Waggoner and Ward
6 RFD: Constitution, Campaign Finance, Ethics, and Elections
7 First Read: 01-MAR-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to elections and the provision of secure
12 overseas absentee voting by electronic transmission; to
13 establish the Alabama Electronic Overseas Voting Advisory
14 Committee to determine whether a secure electronic means may
15 be established for use by the Secretary of State to conduct
16 overseas absentee voting; to provide a procedure for the
17 adoption of rules by the committee and the Secretary of State
18 for conducting overseas absentee voting; to require the
19 committee and the Secretary of State to determine the
20 requirements for a request and receipt of an overseas absentee
21 ballot, for the return of a voted overseas absentee ballot,
22 for an overseas voter certificate, for the instructions for
23 voting an overseas absentee ballot, and for the processing of
24 a voted overseas absentee ballot; and to require the Secretary
25 of State to adopt rules regarding emergency overseas absentee
26 voting rule powers and situations during which those powers
27 may be exercised.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

24 Section 2. (a) The Alabama Electronic Overseas
25 Voting Advisory Committee is created to determine whether
26 secure electronic means may be established for conducting
27 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
27 Secretary of State and the committee are unable to jointly

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

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

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

24 (2) Detailed instructions to be given eligible
25 overseas voters regarding voting by secure remote electronic
26 transmission.

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

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

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

7 (6) Procedures for ensuring the physical security of
8 the remote voting site for receipt and transmission of blank
9 and voted absentee ballots.

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

15 (1) The use of encrypted information, including, but
16 not limited to, ballots, passwords, and both public and
17 private encryption keys.

18 a. A public or private key encryption methodology
19 shall include key generation under the control of the
20 Secretary of State.

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

24 c. A password protected private key that is unique
25 for each eligible overseas voter to digitally sign the ballot
26 for transmission and storage before decryption by the
27 canvassing board.

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

6 (3) The capability to secure access to and from the
7 overseas voter and the voting server or the voting database
8 platform, or both.

9 (4) The verification of the authenticity of the
10 identity of the overseas voter before granting access to the
11 transmission of election material.

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

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

17 (7) The capability to record election material
18 received by secure transmission.

19 (8) The capability for the absentee election manager
20 to produce a marked paper ballot for each vote cast by secure
21 transmission.

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

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

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

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

2 (4) One of the following:

3 a. An APO/FPO or other deliverable overseas address,
4 if the overseas voter requests that the ballot be mailed.

5 b. A facsimile machine number where return
6 information shall be received, if the overseas voter requests
7 that the ballot be faxed. If the voter requests facsimile
8 transmission, his or her signature is also required.

9 c. An electronic mail address, if the overseas voter
10 requests that the ballot be transmitted pursuant to electronic
11 mail.

12 d. A signed application for an electronic ballot if
13 the overseas voter requests that the ballot be transmitted or
14 accessed by other secure electronic means approved by rule of
15 the Secretary of State.

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

19 (c) The absentee election manager and the staff of
20 the absentee election manager shall ensure the confidentiality
21 of all voted ballots, including voted ballots received by
22 facsimile.

23 Section 5. In determining the requirements for
24 receipt of a request for an overseas absentee ballot, the
25 committee and the Secretary of State shall consider
26 verification by the absentee election manager of the
27 information provided, a determination that the overseas voter

1 is qualified and registered to vote in the election, and the
2 provision of:

3 (1) An absentee ballot.

4 (2) Instructions for voting.

5 (3) Instructions for returning the voted ballot.

6 (4) An overseas voter certificate.

7 Section 6. The committee and the Secretary of State
8 shall determine the procedures whereby an overseas voter may
9 return a voted ballot.

10 Section 7. In determining the requirements for an
11 overseas voter certificate, the committee and the Secretary of
12 State shall consider including information including the
13 following:

14 "OVERSEAS VOTER CERTIFICATE

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

17 "1. I am a member of the uniformed services or
18 Merchant Marine on active duty temporarily residing outside
19 the United States; or the eligible spouse or dependent of such
20 a member temporarily residing outside the United States; or a
21 United States citizen temporarily residing outside the United
22 States; and

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

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

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

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

17 "Signed: _____ Date:

18 _____"

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

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

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

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

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

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

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

1 "(7) If mailed, the voted absentee ballot and
2 overseas voter certificate shall be mailed to the absentee
3 election manager as follows:

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

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

20 "c. Mail the absentee ballot to the absentee
21 election manager with sufficient postage.

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

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

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

10 Section 10. (a) The Secretary of State is granted
11 authority to adopt requirements related to witnessing or
12 notarization of absentee ballots, voter identification,
13 candidate qualifying, and ballot access procedures, ballot
14 printing, and the application process for absentee balloting
15 in elections for federal, state, county, and municipal offices
16 and constitutional amendments and other referenda to comply
17 with federal law.

18 (b) The Secretary of State is authorized to extend
19 the deadline for receiving, processing, and counting absentee
20 ballots if absentee ballots are transmitted to qualified
21 absentee voters less than the minimum number of days prior to
22 an election as required by federal law. Absentee election
23 officials utilized for the processing and counting of absentee
24 ballots pursuant to this section shall be appointed in the
25 manner prescribed in Section 17-11-11 of the Code of Alabama
26 1975, and compensated as provided in Section 17-8-12 of the
27 Code of Alabama 1975.

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

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

16 Section 12. Notwithstanding any other laws to the
17 contrary, all expenses and costs incurred by the state or any
18 county commission in carrying out the responsibilities and
19 duties required in this act shall be paid by the State of
20 Alabama. All costs associated with this act shall be drawn
21 from funds made available to the Secretary of State under
22 state and federal law to pay all such expenses and costs in
23 all counties regardless of whether a state elective office or
24 referendum appears on the ballot in a particular county.

25 Section 13. This act shall become effective
26 immediately following its passage and approval by the
27 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 Fi-
nance, Ethics, and Elections..... 01-MAR-11

Read for the second time and placed on
the calendar..... 22-MAR-11

Read for the third time and passed as
amended 31-MAR-11

Yeas 30
Nays 0
Abstaining 1

Patrick Harris
Secretary