

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

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SYNOPSIS: Under existing municipal election law, there is no provision addressing the procedures to be followed when a candidate dies prior to the election.

This bill would specify that if a candidate dies prior to the election, the deceased candidate is deemed to be withdrawn from the election. This bill would further specify that if only one candidate for the office remains due to a withdrawal, the remaining candidate would be deemed elected to the office.

Under existing municipal election law, the mayor is required to deliver absentee election supplies to the clerk not less than 21 days prior to an election. Title 17, Code of Alabama 1975, requires the official list of qualified voters to be furnished to the absentee election manager in a municipal election at least 35 days prior to an election.

1 This bill would specify the deadline of
2 delivery of election supplies to no less than 35
3 days prior to an election in order to conform to
4 Title 17.

5 Under existing municipal election law, the
6 term voting machines is used in Chapter 46 of Title
7 11, Code of Alabama 1975. The term voting machines
8 in Chapter 46 generally applies to mechanical
9 voting machines. Other election laws authorize the
10 governing bodies of counties, municipalities, and
11 other political subdivisions to adopt and direct
12 the use of electronic vote counting systems.

13 This bill would distinguish voting machines
14 from electronic vote counting systems in municipal
15 elections in order to clarify that the statutory
16 requirements applicable to voting machines do not
17 apply to municipalities using electronic vote
18 counting systems.

19 Under existing municipal election law, in
20 the event of a tie after a runoff election, the
21 municipal governing body votes to determine the
22 winner. Section 17-12-23, Code of Alabama 1975,
23 requires that, when there is a tie between the two
24 highest candidates for the same office in a runoff
25 election, the winner is decided by lot.

26 This bill would provide that in a municipal
27 election, the municipal governing body would have

1 one week from the runoff election canvassing date
2 to decide the winner of the runoff election. If the
3 governing body fails to act within that time, the
4 tie would be decided by lot not later than 5:00
5 P.M. on the first Tuesday following the runoff
6 election.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT

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

1 provide the procedure to establish the winner of a municipal
2 election in the event of a tie after the runoff election.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 11-46-25, 11-46-26, 11-46-32,
5 11-46-33, and 11-46-55, Code of Alabama 1975, are amended to
6 read as follows:

7 "§11-46-25.

8 "(a) In all municipal elections on any subject which
9 may be submitted by law to a vote of the people of the
10 municipality and for any municipal officers, if paper ballots
11 are used, the voting shall be by official ballot printed and
12 distributed as provided in subsections (c) and (d), and no
13 ballot shall be received or counted in any election unless it
14 is provided as prescribed by law.

15 "(b) There shall be but one form of ballot for all
16 the candidates for municipal office and every ballot provided
17 for use at any polling place in a municipal election shall
18 contain the names of all candidates who have properly
19 qualified and have not withdrawn, as provided in subsection
20 (g), together with the title of the office for which they are
21 candidates.

22 "(c) All ballots shall be printed in black ink on
23 clear book paper. At the bottom of each ballot and at a point
24 an equal distance from the sides thereof there shall be
25 printed a one-inch square in which the number of the ballot
26 shall be placed by the inspector when the ballot is cast. The

1 arrangement of the ballot shall in general conform
2 substantially to the plan given in subsection (f).

3 "(d) Ballots shall be fastened together in
4 convenient numbers in books or blocks in such manner that each
5 ballot may be detached and removed separately, and each ballot
6 shall have attached to it a stub of sufficient size to enable
7 one of the inspectors to write or stamp his or her name or
8 initials thereon and so attached to the ballot that when the
9 same is folded the stub can be detached therefrom without
10 injury to the ballot or exposing the contents thereof.

11 "(e) Absentee ballots shall be in the form
12 prescribed for absentee ballots by Title 17.

13 "(f) The ballot shall be arranged in substantially
14 the following form:

15 "For Mayor

16 "Vote for One

17 "() John Doe

18 "() Richard Roe

19 For City Council Place Number One

20 "() _____

21 "() _____

22 For City Council Place Number Two

23 "() _____

24 "() _____

1 "Etc.

2 "(g) The mayor shall cause to be printed on the
3 ballots the name of any qualified elector who, by 5:00 P.M. on
4 the third Tuesday in July preceding the date set for the
5 election, has filed a statement of candidacy, accompanied by
6 an affidavit taken and certified by an officer authorized to
7 take acknowledgments in this state that such person is duly
8 qualified to hold the office for which the person desires to
9 become a candidate. Such statement shall be substantially in
10 the following form:

11 "State of Alabama, _____ County. I, the undersigned,
12 being first duly sworn, depose and say that I am a citizen of
13 the city (or town) of _____, in said county, and reside at
14 _____, in said city (or town); that I have been or will have
15 been on the date of the municipal election a resident of said
16 city (or town) for a period of not less than 90 days; that I
17 desire to become a candidate for the office of _____ in said
18 city (or town) for the term of _____ years at the election for
19 such office to be held on the _____ day of _____, 2__;
20 that I am presently a qualified elector of the city (or town)
21 of _____; and I hereby request that my name be printed upon the
22 official ballot at said election.

23 "(Signed) _____

24 "Subscribed and sworn to before me by said

1 _____ on this ___ day of ___, 2__
2 "(Style of Officer) _____"

3 "(h) No names shall be printed upon the ballot as
4 candidates for election except the names of such persons as
5 become candidates in the manner prescribed in subsection (g)
6 nor may any person be a candidate or be permitted to file a
7 declaration for more than one place or position in a group of
8 offices of the same name when such offices have been
9 designated by number as authorized in Section 11-46-22.

10 "(i) All statements of candidacy filed with the
11 mayor within the time prescribed in subsection (g) shall be
12 preserved for six months after the election for which such
13 statements of candidacy were filed.

14 "(j) Any candidate may withdraw as a candidate by
15 giving written notice to the mayor, at any time, prior to the
16 date of the election. If a candidate dies prior to the
17 election, the deceased candidate is deemed withdrawn from the
18 election. If a candidate withdraws, as herein provided, the
19 election officials shall, if paper ballots are used in the
20 election, draw a line in ink through the name of such
21 candidate; the election officials shall, if voting machines
22 are used in the election, paste or otherwise secure a strip of
23 white paper over the name of such candidate. If electronic
24 voting tabulators are used in the election, the name of the

1 candidate shall be removed from the ballot in accordance with
2 the manufacturer's guidelines or instructions.

3 "All written notices of withdrawal filed with the
4 mayor shall be preserved for six months after the election.

5 "§11-46-26.

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

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

8 "§11-46-32.

9 "(a) The mayor or other chief executive officer of
10 the municipality shall at the expense of the municipality
11 procure and superintend and insure the delivery to the
12 election officers at each polling place within the corporate
13 limits of the municipality of the necessary election supplies
14 and shall also procure and deliver or cause to be delivered to
15 the municipal clerk not less than ~~21~~ 35 days prior to the
16 holding of any election to which this article pertains a
17 sufficient number of the absentee ballots and the envelopes
18 therefor prescribed by general laws and other supplies needed
19 for the handling of absentee ballots in such election in the
20 manner prescribed by general law. In the event the municipal
21 clerk is a candidate in the election, he shall immediately
22 upon receipt of the absentee ballots and other supplies
23 deliver the same to the person appointed pursuant to Section
24 11-46-55 to act in his stead.

25 "(b) When paper ballots are used, such supplies
26 shall consist of: At least 100 ballots for each 50 registered
27 electors at each voting place; the same number of black seals,

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

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

27 "§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.