

1 HB144
2 215470-2
3 By Representatives Jones (S), Drummond, Alexander, Lawrence,
4 Forte and Rogers
5 RFD: Constitution, Campaigns and Elections
6 First Read: 13-JAN-22

8 SYNOPSIS: Under existing law, where only two
9 candidates run for election for a particular office
10 in a municipal election and there is a tie between
11 the two candidates, the governing body of the
12 municipality must order a second or runoff election
13 between the two candidates.

14 This bill would eliminate the requirement
15 for a second or runoff election where only two
16 candidates run for election for a particular office
17 in a municipal election and there is a tie between
18 the two candidates.

19 Also under existing law, where there is a
20 tie between two candidates for the same office in
21 an election for a county or precinct office, the
22 tie is decided by lot by the sheriff of the county.

23 This bill would provide that where there is
24 a tie between two candidates for a county or
25 precinct office, the tie is decided by lot by the
26 judge of probate, rather than the sheriff.

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 Relating to elections; to amend Section 11-46-55,
6 Code of Alabama 1975, as last amended by Act 2021-164 of the
7 2021 Regular Session, and Section 17-12-23, Code of Alabama
8 1975; to eliminate the requirement for a second or runoff
9 election where only two candidates run for election for a
10 particular office in a municipal election and there is a tie
11 vote; and to provide that where there is a tie between two
12 candidates for the same office in an election for a county or
13 precinct office, the tie is decided by lot by the judge of
14 probate.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Section 11-46-55, Code of Alabama 1975,
17 as last amended by Act 2021-164 of the 2021 Regular Session,
18 and Section 17-12-23, Code of Alabama 1975, are amended to
19 read as follows:

20 "§11-46-55.

21 "(a) Commencing at 12:00 noon on the first Tuesday
22 after the election, the municipal governing body shall proceed
23 to open the envelopes addressed to the governing body which
24 have been delivered by the returning officers to the municipal
25 clerk, canvass the returns, and ascertain and determine the
26 number of votes received by each candidate and for and against
27 each proposition submitted at the election. If it appears that

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

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

24 "(c) If two or more offices constituting a group are
25 to be filled and there are more candidates for election than
26 there are offices, then the majority of the votes cast for the
27 office in the election shall be ascertained by dividing the

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

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

1 "(e) In the event one of the candidates for a
2 particular office in the runoff election withdraws or dies,
3 then there need not be a second or runoff election to fill the
4 office. ~~nor shall the name of either the party so withdrawing~~
5 ~~or the remaining candidate be printed on the ballot of any~~
6 ~~second election held under this article. This second election~~
7 ~~shall be held by the same election officers who held the first~~
8 ~~election and at the same places the first election was held.~~
9 If there should be a tie vote cast at any runoff election,
10 then in that event the tie shall be decided by the municipal
11 governing body no later than 12:00 noon on the first Tuesday
12 following the second or runoff election. A vote for a
13 particular candidate by a majority of those members eligible
14 to vote of the governing body shall be necessary to decide the
15 election in his or her favor. If the municipal governing body
16 fails to break the tie, the elected candidate shall be decided
17 by lot by the judge of probate of the county where the city or
18 town hall is located no later than 5:00 p.m. on the first
19 Tuesday following the second or runoff election in the
20 presence of the candidates and other electors who choose to be
21 present.

22 "(f) Any judge of probate who openly participated in
23 the promotion of candidates in the election which resulted in
24 a tie may not decide the outcome of the election and shall be
25 disqualified to do so. The presiding circuit court judge in
26 the county where the city or town hall is located shall

1 replace the disqualified judge of probate and shall conduct
2 the duties required herein.

3 "(g) Within 10 days of canvassing the results, the
4 municipal clerk shall file a copy of each certificate of
5 election with all of the following:

6 "(1) The office of the judge of probate of the
7 county in which the city or town hall is situated. The judge
8 of probate shall file the certificate in the same manner that
9 he or she files the declaration of the result of elections to
10 county offices.

11 "(2) The Secretary of State.

12 "(3) The Alabama League of Municipalities.

13 "§17-12-23.

14 "In all elections where there is a tie between the
15 two highest candidates for the same office, for all county or
16 precinct offices, it shall be decided by lot by the ~~sheriff~~
17 judge of probate of the county in the presence of the
18 candidates; and in the case of the office of circuit judge,
19 senator, representative, or any state officer not otherwise
20 provided for, the Secretary of State shall, in the presence of
21 the Governor, and such other electors as may choose to be
22 present, decide the tie by lot."

23 Section 2. This act shall become effective
24 immediately following its passage and approval by the
25 Governor, or its otherwise becoming law.