HB419

203941-2

By Representative Standridge

RFD: Constitution, Campaigns and Elections

First Read: 10-MAR-20
SYNOPSIS: Existing law does not provide for a contingency plan in the event an election is disrupted because of a declared state of emergency. This bill would establish the Elections Emergency Act and authorize the Governor to suspend or delay elections in the event of a declared state of emergency.

A BILL TO BE ENTITLED AN ACT Relating to elections; to amend Section 17-11-3, Code of Alabama 1975 and to add a new Article 4, commencing with Section 17-9-70, to Chapter 9 of Title 17 of the Code of Alabama 1975; to establish the Elections Emergency Act; and to authorize the Governor to suspend or delay elections in the event of a declared state of emergency.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Section 17-11-3, as last amended by Act 2019-507, 2019 Regular Session, Code of Alabama 1975, is amended to read as follows:

"§17-11-3.

"(a) Any qualified elector of this state may apply for and vote an absentee ballot by mail, by hand delivery, or by commercial carrier, as determined by rule by the Secretary of State, as provided in Sections 17-11-5 and 17-11-9, in any primary, general, special, or municipal election, if he or she makes application in writing therefor not less than five days prior to the election in which he or she desires to vote and meets one or more of the following requirements:

"(1) The person expects to be out of the county or the state, or the municipality for municipal elections, on election day.

"(2) The person has any physical illness or infirmity which prevents his or her attendance at the polls, whether he or she is within or without the county on the day of the election.

"(3) The person expects to work a shift which has at least 10 hours which coincide with the hours the polls are open at his or her regular polling place.

"(4) The person is enrolled as a student at an educational institution located outside the county of his or her personal residence, attendance at which prevents his or her attendance at the polls."
(5) The person is a member of, or spouse or dependent of a member of, the Armed Forces of the United States or is similarly qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.

(6) The person has been appointed as an election officer or named as a poll watcher at a polling place other than his or her regular polling place.

(7) The person is a caregiver for a family member to the second degree of kinship by affinity or consanguinity and the family member is confined to his or her home.

(8) The person is incarcerated in prison or jail and has not been convicted of a felony involving moral turpitude, as provided in Section 17-3-30.1.

(b) An applicant for an absentee ballot who is a member of the Armed Forces of the United States, including the Alabama National Guard, the United States Naval Reserve, the United States Air Force Reserve, and the United States Army Reserve on active duty or active duty for training or an applicant who is the spouse of any member of the armed forces or any other applicant qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §1973ff, may make application for an absentee ballot by filling out the federal postcard application form, authorized and provided for under the provisions of The Federal Voting Assistance Act of 1955,
Public Law 296, Chapter 656, H.R. 4048, approved August 9, 1955, 84th Congress 1st Session.

"(c) Any registered elector who requires emergency treatment by a licensed physician within five days of an election may apply for an emergency absentee ballot for the election and may vote by returning the absentee ballot no later than noon on the day the election is held. The attendant physician shall describe and certify the circumstances as constituting an emergency on a special form designed by the Secretary of State and provided by his or her office to local absentee election managers. The special form shall be attached to the application.

"(d)(1) Any registered elector whose name appears on the poll list of qualified voters may vote by an emergency absentee ballot if any of the following situations arise:

"a. The elector is required by his or her employer under unforeseen circumstances within five days before an election to be unavailable to vote at the polls on election day.

"b. The elector is a caregiver of a person who requires emergency treatment by a licensed physician within five days before an election.

"c. A family member to the second degree of kinship by affinity or consanguinity of an elector dies within five days before an election.

"(2) Under such circumstances, the elector shall apply for an emergency absentee ballot at the office of the
absentee election manager no later than the close of the
business day one day prior to the election. The applicant
shall complete and file an application form designed by the
Secretary of State for emergency absentee voters. The form
shall contain an affidavit which the applicant shall sign or
swear acknowledging that he or she was not aware of the
situation constituting the emergency prior to five days before
the election. An applicant who meets the requirements of this
subsection may vote by an emergency absentee ballot. After
voting the ballot, the voter shall hand the ballot to the
absentee election manager.

"(e) If the occurrence of a state of emergency as
declared in this or any other state, or by the federal
government, renders substantial compliance with this article
impossible or unreasonable for a group of qualified voters who
respond to the emergency, the Secretary of State, pursuant to
Section 41-22-5, may adopt an emergency rule to allow those
qualified voters to vote by absentee ballot. Notwithstanding
any other laws to the contrary, all expenses and costs
incurred by the state or any county in carrying out the
responsibilities and duties included in an emergency rule
adopted pursuant to this subsection shall be paid by the State
of Alabama from any funds made available for election expenses
under state and federal law.

"(f) Notwithstanding any other provision of
otherwise applicable law Except as provided for in Article 4,
commencing with Section 17-9-70, of Chapter 9, in the event
more than one absentee ballot is cast in the name of the single voter, whether any such multiple ballot is cast by mail or otherwise, none of the affidavit envelopes containing the multiple ballots shall be opened, and none of the multiple ballots shall be counted, except in the event of an election contest, upon the order of the election contest tribunal. Upon the conclusion of an election contest or, in the event no such contest is filed, upon the expiration of time for filing such a contest, the multiple ballots shall be provided to the district attorney, with photocopies provided to the state Attorney General, for the investigation, prosecution, or other action as may be appropriate under applicable law."

Section 2. A new Article 4, commencing with Section 17-9-70, is added to Chapter 9 of Title 17 of the Code of Alabama 1975, to read as follows:

ARTICLE 4. Emergencies.

§17-9-70.

This article shall be known and may be cited as the Elections Emergency Act.

§17-9-71.

(a) As used in this article, imminent threat of emergency means the imminent threat of a natural or man-made disaster, including, but not limited to, fire, flood, storm, earthquake, epidemic, technological failure or accident, riot, sudden and severe energy shortage, act of terror, or other condition that is likely to substantially impair the ability
of electors in any precinct, district, or county, to exercise their right to vote in an upcoming election.

(b) Because of the existing and continuing possibility of an emergency, act of terrorism, or common disaster occurring before or during a regularly scheduled or special election, and in order to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to exercise their right to vote, to generally minimize, to whatever degree possible, a person's exposure to danger during declared states of emergency, and to protect the integrity of the electoral process, it is hereby found and declared to be necessary to designate a procedure for the emergency suspension or delay and rescheduling of elections.

(c) Upon the issuance of a proclamation or an executive order declaring a state of emergency, as provided in Chapter 9 of Title 31, or when the Governor issues a declaration that there exists an imminent threat of emergency, the Governor may suspend or delay any election. The Governor may take such action independently or at the request of the Secretary of State, the judge of probate from the county affected by the emergency, or the municipal clerk from the municipality affected by the emergency.

(d) The Governor, upon consultation with the Secretary of State, shall reschedule any election suspended or delayed due to an emergency. The election shall be held not more than 21 calendar days after the date of the suspended or
delayed election. Time permitting, notice of the election shall be published at least once in a newspaper of general circulation in the affected area and, where practicable, broadcast as a public service announcement on radio and television stations starting at least one week prior to the date the rescheduled election is to be held.

(e) Any subsequent election, including a runoff election, within the same election cycle in the area affected shall receive the same delay or suspension.

(f) Official ballots may not be invalidated on the basis that the ballots contain the original election date.

(g)(1) If, as a direct result of the emergency, any voted ballots at the polling places or equipment on which ballots have been voted, or any voted absentee ballots already received by the appropriate election officials or any equipment on which voted absentee ballots have been destroyed or otherwise damaged so that the ballots cannot be counted, the Governor shall specify that the ballots or votes previously cast need to be recast on or by the rescheduled election date so that the ballots may be counted. The Governor shall direct the appropriate election officials to immediately send replacement absentee ballots to all absentee voters whose voted ballots are known to have been destroyed or damaged.

(2) Any absentee ballots cast and received by the rescheduled election date and able to be counted shall be valid and counted when determining the results of the rescheduled election; provided, however, if more than one
absentee ballot is received from any voter, only the first
absentee ballot received and able to be counted shall be
counted.

(h) If the postponement of the election is ordered
after voting at the polls on the original election date has
already commenced and any voted ballots, voting equipment
containing voted ballots, or pollbooks recording who has
already voted in that election in that precinct have been
destroyed or damaged as a direct result of the emergency so
that the votes cannot be counted or it cannot be determined
who has already voted, all qualified voters in the affected
precinct shall be allowed to vote in the rescheduled election,
and no votes cast at the polls on the original election date
shall be counted.

(i) If the postponement of the election is ordered
after voting at the polls on the original election date has
already commenced but no voted ballots have been destroyed or
damaged, no voting equipment containing voted ballots have
been destroyed or damaged, or no pollbooks recording who has
already voted in that election in that precinct have been
destroyed or damaged as a direct result of the emergency, only
qualified voters who had not yet voted shall be eligible to
vote on the rescheduled election day, and all votes cast on
the original and rescheduled election dates shall be counted
at the close of the polls on the rescheduled election day.

(j) The Secretary of State, by rule, shall adopt an
elections emergency contingency plan that contains goals and
policies that give specific direction to state and local
elections officials when an election has been suspended or
delayed due to an emergency. The contingency plan shall be
statewide in scope and shall provide, at a minimum, all of the
following:

(1) A procedure for state and local elections
officials to follow when an election has been suspended or
delayed to ensure notice of the suspension or delay to the
proper authorities, the electorate, the communications media,
and poll workers.

(2) A procedure for the orderly conduct of a
rescheduled election, whether municipal, county, district, or
statewide in scope; coordinating those efforts with the
appropriate elections officials and the members of the
governing body holding the election, if appropriate; and
working with the appropriate emergency management officials in
determining the safety of existing polling places or
designating additional polling places.

(3) A procedure for the release and certification of
election returns to the Secretary of State for suspended or
delayed and subsequently rescheduled elections.

§17-9-72.

In the event the Governor declares a state of
emergency pursuant to Chapter 9 of Title 31 in any precinct on
the day of an election, the county commission or municipal
governing body may establish, at any safe and convenient place
outside of the affected precinct, an additional polling place
for the qualified electors of that precinct to vote. The registration books of the affected precinct shall be applicable to and shall be used at the polling place established pursuant to this section.

§17-9-73.

For all state and county elections, all expenses and costs incurred under this article shall be reimbursed in accordance with Article 1 of Chapter 16, commencing with Section 17-16-1.

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