

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

1 ENGROSSED

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

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

23 "§11-46-55.

24 "(a) Commencing at 12:00 noon on the first Tuesday
25 after the election, the municipal governing body shall proceed
26 to open the envelopes addressed to the governing body which
27 have been delivered by the returning officers to the municipal

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

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

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

1 ~~Tuesday following the regular election, at which election the~~
2 ~~two candidates shall be candidates, and the individual~~
3 ~~receiving the highest number of votes for that office in the~~
4 ~~runoff election shall be declared elected.~~

5 "(e) In the event one of the candidates for a
6 particular office in the runoff election withdraws or dies,
7 then there need not be a second or runoff election to fill the
8 office. ~~nor shall the name of either the party so withdrawing~~
9 ~~or the remaining candidate be printed on the ballot of any~~
10 ~~second election held under this article. This second election~~
11 ~~shall 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 where the city or
22 town hall is located no later than 5:00 p.m. on the first
23 Tuesday following the second or runoff election in the
24 presence of the candidates and other electors who choose to be
25 present.

26 "(f) Any judge of probate who openly participated in
27 the promotion of candidates in the election which resulted in

1 a tie may not decide the outcome of the election and shall be
2 disqualified to do so. The presiding circuit court judge in
3 the county where the city or town hall is located shall
4 replace the disqualified judge of probate and shall conduct
5 the duties required herein.

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

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

14 "(2) The Secretary of State.

15 "(3) The Alabama League of Municipalities.

16 "§17-12-23.

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

26 Any judge of probate who is a candidate in the race
27 in which there is a tie or openly participated in the

1 promotion of candidates in the election which resulted in a
2 tie shall not decide the outcome of the election. The
3 presiding circuit court judge in the county shall replace the
4 probate judge and break the tie by lot."

5 Section 2. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and referred to the House of Representatives committee on Constitution, Campaigns and Elections..... 13-JAN-22

Read for the second time and placed on the calendar 1 amendment 09-FEB-22

Read for the third time and passed as amended..... 16-FEB-22

Yeas 98, Nays 3, Abstains 0

Jeff Woodard
Clerk