HB144

215470-3

By Representatives Jones (S), Drummond, Alexander, Lawrence, Forte and Rogers

RFD: Constitution, Campaigns and Elections

First Read: 13-JAN-22
A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§11-46-55.

"(a) Commencing at 12:00 noon on the first Tuesday after the election, the municipal governing body shall proceed to open the envelopes addressed to the governing body which have been delivered by the returning officers to the municipal
clerk, canvass the returns, and ascertain and determine the
number of votes received by each candidate and for and against
each proposition submitted at the election. If it appears that
any candidate or any proposition in the election has received
a majority of the votes cast for that office or on that
question, the municipal governing body shall declare the
candidate elected to the office or the question carried, and a
certificate of election shall be given to the individuals by
the municipal governing body or a majority of them, which
shall entitle the individuals so certified to the possession
of their respective offices immediately upon the expiration of
the terms of their predecessors as provided by law. If the
certification results of provisional ballots cast at the
election have been received from the board of registrars prior
to the first Tuesday after the election, or if no provisional
votes were cast in the election, the municipal governing body,
at any special or regular meeting, may canvass the results
before the first Tuesday after the election.

"(b) If a single office is to be filled at the
election and there is more than one candidate running, then
the majority of the votes cast for the office in the election
shall be ascertained by dividing the total votes cast for all
candidates for the office by two, and any number of votes in
excess of one half of the total votes cast for all candidates
for the office shall be a majority within the meaning of
subsection (a).
(c) If two or more offices constituting a group are to be filled and there are more candidates for election than there are offices, then the majority of the votes cast for the office in the election shall be ascertained by dividing the total vote cast for all candidates for the offices by the number of positions to be filled and then dividing the result by two. Any number of votes in excess of the number ascertained by the last division shall be the majority prescribed in subsection (a) as necessary for election. If in ascertaining the result in this way it appears that more candidates have obtained this majority than there are positions to be filled, then those having the highest vote, if beyond the majority just defined, shall be declared elected to fill the positions.

(d) If no candidate receives a majority of all the votes cast in the election for any one office or offices for the election to which there were more than two candidates, then the municipal governing body shall order a second or runoff election to be held on the fourth Tuesday following the regular election, at which election the two candidates having received the most and the second most votes, respectively, shall be candidates, and the individual receiving the highest number of votes for that office in the runoff election shall be declared elected. If only two candidates are standing for election for any one office or offices and neither candidate receives a majority, then the municipal governing body shall order a second or runoff election to be held on the fourth Tuesday following the regular election.
Tuesday following the regular election, at which election the
two candidates shall be candidates, and the individual
receiving the highest number of votes for that office in the
runoff election shall be declared elected.

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

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

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

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

"(2) The Secretary of State.


§17-12-23.

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

Any judge of probate who is a candidate in the race in which there is a tie or openly participated in the
promotion of candidates in the election which resulted in a tie shall not decide the outcome of the election. The presiding circuit court judge in the county shall replace the probate judge and break the tie by lot."

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