

1 SB5  
2 173250-2  
3 By Senator Dial (Constitutional Amendment)  
4 RFD: Tourism and Marketing  
5 First Read: 15-AUG-16

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8 SYNOPSIS: Under existing law, write-in votes are  
9 permitted only in non-municipal general elections,  
10 and all write-in votes are counted if the voter  
11 properly writes the name on the ballot and  
12 registers the vote by a mark in the space  
13 designated for that particular office.

14 This bill would amend the current law to  
15 provide that write-in votes for a specific office  
16 would be counted at the same time as provisional  
17 ballots are counted if the number of write-in votes  
18 for that office is greater than or equal to the  
19 difference in votes between the two candidates  
20 receiving the greatest number of votes for that  
21 office.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
26

1           To amend Sections 17-6-28 and 17-12-1, Code of  
2 Alabama 1975, relating to write-in votes, to provide that  
3 write-in votes would be counted at the same time as  
4 provisional ballots under certain conditions.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6           Section 1. Sections 17-6-28 and 17-12-1, Code of  
7 Alabama 1975, are amended to read as follows:

8           "§17-6-28.

9           "(a) Write-in votes shall be permitted only in  
10 non-municipal general elections and shall be counted as  
11 provided in this section based on one of the following:-

12           "(1) Upon a determination that the number of  
13 write-in votes for a specific office is greater than or equal  
14 to the difference in votes between the two candidates  
15 receiving the greatest number of votes for the specific  
16 office.

17           "(2) Upon a written request satisfying the  
18 requirements in subsection (i).

19           "(b) The ballot for a non-municipal general election  
20 must be constructed so that the voter can mark a write-in vote  
21 for each office in the same manner that votes are registered  
22 for regular candidates. In order to cast a valid write-in  
23 vote, the voter must (1) write the name on the ballot and (2)  
24 register the vote by a mark in the space designated for that  
25 office. A write-in vote shall not be counted if the vote that  
26 is not registered as provided above shall not be considered a  
27 valid write-in vote and shall not be included in determining

1 the number of write-in votes cast for a specific office as  
2 required in this section. If a voter registers a vote for a  
3 name on the ballot and then writes in another name for the  
4 same office but fails to register the write-in vote, the  
5 ballot shall be treated as if no write-in vote had occurred  
6 and the regular vote shall be counted. If a properly  
7 registered write-in vote causes an over-vote, it shall be  
8 treated as any other over-vote and none of the votes for the  
9 over-voted office shall be counted. However, the remainder of  
10 the ballot shall be counted. When counting write-in votes,  
11 poll officials must check for over-votes if the electronic  
12 ballot counter does not perform the function.

13 "(c) Upon the closing of the polls, all write-in  
14 votes which may be in the form of a ballot or, if an  
15 electronic voting system is utilized in the polling place, a  
16 ballot image, results tape, or other media as prescribed by  
17 the Secretary of State by administrative rule, from each  
18 polling place in the county shall be returned to a central  
19 location in the county as determined by the judge of probate  
20 where the canvassing board shall determine the number of  
21 write-in votes cast for each office on the ballot, ballot  
22 image, results tape, or other media as prescribed by the  
23 Secretary of State by administrative rule. The chair of each  
24 local political party as defined in Section 17-13-40, any  
25 person whose name is on the ballot as an independent, and any  
26 announced or known write-in candidates shall be given a  
27 minimum of 24 hours notice of the time and place where the

1 canvassing board will meet to determine the number of write-in  
2 votes cast for each office on the ballot, ballot image,  
3 results tape, or other media prescribed by the Secretary of  
4 State by administrative rule and shall be permitted to be  
5 present when the determination is made. The county, at its  
6 discretion, may appoint and compensate poll workers to assist  
7 the canvassing board in determining the number of write-in  
8 votes for each office. After the determination of the number  
9 of write-in votes cast for each office has been made, the  
10 canvassing board shall take the following actions:

11 "(1) For federal and state offices on the ballot,  
12 prepare and transmit to the Secretary of State not later than  
13 5:00 p.m. on the first Friday following the election a written  
14 report itemizing the number of write-in votes cast for each  
15 separate federal or state office on the ballot and the total  
16 votes cast for each of the candidates receiving the greatest  
17 number of votes for each federal or state office on the ballot  
18 in the county.

19 "(2) For each specific county office on the ballot,  
20 determine whether the number of write-in votes cast is greater  
21 than or equal to the difference in votes between the  
22 candidates receiving the greatest number of votes for the  
23 specific county office.

24 "(3) Post a notice stating the number of write-in  
25 votes cast in each office on the ballot and, for each specific  
26 county office on the ballot, stating whether the number of  
27 write-in votes cast for the office is greater than or equal to

1 the difference in votes between the candidates receiving the  
2 greatest number of votes for the specific county office. The  
3 notice shall be posted on the door of the courthouse and any  
4 other place deemed appropriate by the canvassing board  
5 including, but not limited to, a county website.

6 "(d) Upon determining the number of write-in votes  
7 as required in subsection (c), all ballots, ballot images, or  
8 results tapes with write-in votes shall be delivered to the  
9 sheriff who shall securely keep the ballots, ballot images, or  
10 results tapes in the same manner as provisional ballots are  
11 kept pursuant to subsection (d) of Section 17-10-2.

12 "(e) Upon receipt of all county reports setting out  
13 the number of write-in votes for each federal or state office,  
14 the Secretary of State shall determine whether the number of  
15 write-in votes cast statewide for any specific federal or  
16 state office is greater than or equal to the difference in  
17 votes between the candidates receiving the greatest number of  
18 votes for that office. In the event the Secretary of State  
19 determines that the number of write-in votes cast statewide  
20 for any federal or state office is greater than or equal to  
21 the difference in votes between the candidates receiving the  
22 greatest number of votes for that office, not later than noon  
23 on the first Monday following the election, the Secretary of  
24 State shall notify each judge of probate from a county where  
25 write-in votes for that office were cast that the write-in  
26 votes for that office shall be counted and reported as  
27 provided in this section.

1           "(f) When the number of write-in votes for any  
2           specific office is greater than or equal to the difference in  
3           votes between the candidates receiving the greatest number of  
4           votes for that office write-in votes shall be counted at the  
5           same time and in the same manner as provisional ballots are  
6           counted pursuant to subsection (f) of Section 17-10-2.

7           "(g) Any qualified elector who disputes the  
8           determination regarding the counting of write-in votes cast  
9           for any particular office on the ballot made by either the  
10           canvassing board or the Secretary of State may file a written  
11           objection as follows, stating with specificity the grounds for  
12           objection:

13           "(1) For objections to the determination made by a  
14           canvassing board for a specific county office, the objection  
15           shall be filed with the canvassing board prior to the date  
16           ballots are due to be counted pursuant to subsection (f).

17           "(2) For objections to the determination made by the  
18           Secretary of State for a specific federal or state office, the  
19           objection shall be filed with the Secretary of State prior to  
20           the date ballots are due to be counted pursuant to subsection  
21           (f).

22           "Any written objection filed pursuant to this  
23           subsection shall be reviewed by the canvassing board for  
24           objections filed under subdivision (1) or by the Secretary of  
25           State for objections filed under subdivision (2). If it is  
26           determined the objection has merit, write-in ballots cast in

1 the office subject to the objection shall be counted pursuant  
2 to subsection (f).

3 "(h) Any expenses incurred by a county for the  
4 counting of write-in votes shall be a reimbursable expense as  
5 provided in Chapter 16 of this title.

6 "(i) In addition to the requirement to count  
7 write-in votes as provided in this section, any qualified  
8 elector who voted in an election may request that write-in  
9 votes for a specific county office on a ballot be counted  
10 provided the request is made in writing to the judge of  
11 probate in the county where the elector voted no later than  
12 5:00 p.m. on the first Friday following the election and is  
13 accompanied by a bond or certified check in an amount  
14 sufficient to cover the cost of the count as determined by the  
15 judge of probate. Any qualified elector who voted in an  
16 election may request that write-in votes for a federal or  
17 state office on a ballot to be counted, provided the request  
18 is made in writing to the Secretary of State not later than  
19 5:00 p.m. on the first Friday following the election and is  
20 accompanied by a bond or certified check in an amount  
21 sufficient to cover the cost of the count as determined by the  
22 Secretary of State. Any write-in vote count authorized under  
23 this subsection shall take place at the same time and in the  
24 same manner as provisional ballots are counted pursuant to  
25 subsection (f) of Section 17-10-2.

26 "§17-12-1.

1           "When the time arrives for closing the polls, all  
2 qualified voters, who are then waiting within the voting room  
3 to vote, shall be permitted by the election officers to do so.

4           "After closing the polls and sealing the required  
5 records, the precinct election officials shall follow the  
6 manufacturer's instructions to lock the equipment against  
7 further voting and to obtain a printout of the votes on each  
8 office and question. The first printout shall be torn from the  
9 equipment so that all printing during the day, from the  
10 initial test before the polls opened through the first  
11 printout of results, shall be on one continuous sheet or roll  
12 of paper. Then, four other printouts of the results shall be  
13 produced and torn out. To each certificate shall be added, if  
14 it is not automatically printed, the following information:

15           "(1) The name of the voting place.

16           "(2) The date.

17           "(3) The identifying number (serial number) of the  
18 tabulating equipment.

19           "(4) The value of the public counter (indicating the  
20 number of votes cast).

21           "(5) The name of each candidate next to the total  
22 number of votes cast for that candidate.

23           "(6) The number and short title of each proposition  
24 next to the number of votes for and against that proposition.

25           "(7) In general elections only, ~~any~~ the number of  
26 ~~write-in votes shall be counted and the totals added to the~~  
27 ~~certificates of result~~ cast in each race on the ballot.

1                    "All precinct election officials shall sign each  
2 certificate of result."

3                    Section 2. The Secretary of State may adopt  
4 administrative rules pursuant to the Alabama Administrative  
5 Procedure Act as necessary to implement this act.

6                    Section 3. This act shall become effective on the  
7 first day of the third month following its passage and  
8 approval by the Governor, or its otherwise becoming law.