

CHAPTER 11

SECRETARY OF STATE

Summary of Contents:

- 11.1 Chief Elections Official
- 11.2 Rulemaking Authority
- 11.3 The Help America Vote Act
- 11.4 Voter Registration

11.1 Chief Elections Official

The Secretary of State is Alabama's chief elections official and, in that capacity, provides uniform guidance for election activities. § 17-1-3. The Secretary of State possesses rulemaking authority for the implementation of election laws under the Alabama Administrative Procedure Act. § 17-1-3. The Secretary of State also serves as the primary state official for federal contact regarding the Help America Vote Act, as well as the National Voter Registration Act. § 17-4-60(a). Finally, the Secretary of State may prescribe forms in furtherance of state election laws such as voter registration forms and absentee ballot applications as well as forms helpful to voters with disabilities, voters who have reading difficulties, and voters who do not speak English.

11.2 Rulemaking Authority

The Secretary of State promulgates rules and prescribes forms and instructions necessary to implement state election statutes. Some examples of Secretary of State rulemaking under the Alabama Administrative Procedure Act are:

- The Help America Vote Act, § 17-2-3 and *e.g.* Ala. Admin Code r. 820-2-1-.01 et seq.;
- Voter registration, § 17-3-1 and *e.g.* Ala. Admin Code r. 820-2-2-.19 et seq.;
- National Voter Registration Act, § 17-4-63 and *e.g.* Ala. Admin Code r. 820-2-2-.01 et seq.;

- Voting style and design, § 17-6-24 and Ala. Admin. Code 307-x-1-.06;
- Electronic voting machines, § 17-7-25 and Ala. Admin Code r. 307-x-1-.01 et seq.;
- Provisional ballots, § 17-10-2 and Ala. Admin Code r. 820-2-6-.01 et seq.;
- Absentee ballot application form, § 17-11-4 and *e.g.* Ala. Admin Code r. 820-2-10-.03; and
- Statement of results of election form, § 17-12-2 and Ala. Admin Code r. 307-x-1-.18.
- Updating the Statewide Voter Registration Database, § 17-4-30.

11.3 The Help America Vote Act

On October 29, 2003, the Help America Vote Act (HAVA) was signed into law. This far-reaching piece of legislation attempts to increase public confidence in the accuracy of elections and to make voting more accessible to all citizens. HAVA required each state to identify its "chief elections officer" and pass legislation to bring the state in compliance with the new election mandates.

11.3.1 State Voter Registration List and Voter Registration Advisory Board

Alabama law provides for the preparation and distribution of lists of qualified electors for each precinct from a statewide voter registration list. § 17-4-2. The law states that an electronic archive in the database for the state voter registration list should be made simultaneously with the printing of each county's lists of qualified voters. This provision contemplates that electronic access to the state voter registration list may be used instead of a printed list in accordance with rules promulgated by the Secretary of State. § 17-4-2. In addition, the judge of probate must certify and furnish reports from the state voter registration list to local election inspectors. § 17-3-60.

A "nondiscriminatory, single, uniform, official, centralized, interactive computerized statewide voter registration list is to be defined, maintained, and administered by the Secretary of State, with advice from the Voter Registration Advisory Board and the President of the Alabama Probate Judges Association." § 17-4-33(a). The computerized list shall contain the name and information of every registered voter in the state and shall

comply with various other federal requirements. For example, the list must be coordinated with the driver's license database of the Department of Public Safety; immediate electronic access to the list must be available to all election officials in the state; and registrars must be able to electronically enter voter information at the time it is received. One free electronic copy is to be provided to each political party following each state and county election and, upon written request, up to two additional electronic copies during each calendar year. § 17-4-33(a)(10).

The Voter Registration Advisory Board oversees the statewide voter registration list in consultation with the Secretary of State. The Governor, the Commissioner of Agriculture and Industries, and the State Auditor each appoint three of the nine members of the board. The law requires one of each of the appointing authorities to reflect the racial, ethnic, and age diversity of the state. Term limits of the board have been abolished and all board members serve at the pleasure of their appointing authority. § 17-4-34.

11.3.1.1 Supervisor of Voter Registration and Voter Registration Lists. The supervisor of voter registration is employed by and works at the direction of the Secretary of State. The supervisor does not employ individuals but supervises those individuals employed by the Secretary of State. The supervisor also trains registrars, provides military and overseas voters with voter registration applications and absentee ballot applications, and provides information relating to procedures for registering and voting absentee ballots. Also, the Secretary of State may assign additional duties to the supervisor of voter registration. § 17-4-35

Despite the supervisor's broad duties with respect to voter registration, their authority is still limited. The supervisor cannot promulgate procedures but may recommend procedures and administrative rules to the Secretary of State. § 17-4-35. Furthermore, the Secretary of State, and not the supervisor of voter registration, is provided with information from the appropriate state agencies regarding who is to be purged from the voter registration list because of death or conviction of a felony. § 17-4-36.

The board of registrars is required to provide certain information to the Secretary of State in order to establish and ensure the accuracy of the state voter registration list. The board must provide all voters' names and the last four digits of their Social Security numbers. Also, the board of registrars in each county is required to provide additional information on each voter in the county, such as the driver's license number or non-

driver's identification number, date of birth, address, race, sex, and political subdivision or voting place. When an applicant for registration is unable to produce a driver's license number, a non-driver's identification number, or the last four digits of their Social Security number, a unique number is assigned to serve as the registrant's voter registration identification number. § 17-4-36.

11.3.2 Provisional Voting

Provisional voting is a procedure that is utilized when questions arise about a person's eligibility to vote. For example, voters may assert that they are registered to vote when their name does not appear on the list of qualified voters. Alternatively, an election official may assert that the individual attempting to vote is not eligible to do so. § 17-10-2.

Historically, Alabama operated under a system of "challenged ballots" where a challenged vote is counted on Election Day but marked so that the election count could be modified in the case of an election contest. In response to HAVA, language regarding challenged ballots was replaced with provisional voting. Now, when such questions arise, the voter must complete a written affirmation that they are a registered voter in the jurisdiction and eligible to vote in that election. The individual is then permitted to vote a provisional ballot that is placed in a separate sealed ballot box. § 17-10-2(b). A voter who is unable to present photo identification may also vote a provisional ballot. The voter has until 5:00 p.m. on the Friday after the election to provide identification to the board of registrars. A provisional ballot is not counted unless the board of registrars verifies that the voter is a registered voter in the precinct and eligible to vote in that election. § 17-10-2.

At noon Tuesday, seven days after the election, the provisional ballot materials are returned to the probate office after the board of registrars has determined whether each vote is to be counted or not counted. Beginning at noon, the canvassing board tabulates the provisional ballots that the registrars have certified were cast by duly registered voters. The provisional voter must be able to ascertain whether the vote was counted and, if not, the reason the vote was not counted. § 17-10-2.

11.3.3 Board of Registrars

The Secretary of State provides administrative rules with guidelines for determining the qualifications of registrars. Each registrar must have a

high school diploma or the equivalent and must possess the minimum computer and map reading skills necessary to function in office. § 17-3-2. Registrars are appointed for a four-year term and can only be removed for cause by the Secretary of State. Written reasons are required for such removals. § 17-3-3.

11.3.4 Voter Re-identification and Updating

Voters required to present identification may do so at the time of voting or by mail by including identification with their application for registration. However, every registered voter must provide identification at the polling place prior to voting, even if they submit identification with their voter registration form. §§ 17-10-1 and 17-9-30. Those voters who do not present identification when voting are entitled to cast a provisional ballot or be positively identified by two election officials. If voting by provisional ballot due to a lack of identification, these voters must then submit proper identification no later than 5:00 p.m. on the first Friday after the election. § 17-10-2.

All voters who fail to vote for four years in their county will have their name placed on an inactive voter list. The status of the voter will have changed only for administrative purposes, but the voter maintains the right to vote provided that the voter completes a voter re-identification form. § 17-4-9. The voter re-identification form is a form prescribed by rule by the Secretary of State.

11.3.5 Absentee Voting for Military and Overseas Voters

The Secretary of State shall provide applications for absentee voting to military and overseas voters in accordance with state law. § 17-11-4 and § 17-4-35. The Secretary of State shall also prescribe rules for military and overseas voters as well as set out special guidelines for these special voters. Each absentee ballot distributed should be accompanied with instructions for returning and completing the absentee ballot as well as instructions for correcting mistakes in completing ballots or obtaining a replacement ballot. The requirement that absentee ballots must be received in the mail or by commercial carrier by noon on Election Day does not apply to Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). 52 U.S.C. § 20301-20311. UOCAVA voters are given an extended period of time to return absentee ballots by mail. These ballots must be received no later than noon seven days after the election. § 17-11-18.

The Alabama Electronic Overseas Voting Advisory Committee determines if secure electronic absentee voting for overseas voters is feasible and, if so, to assist in the implementation thereof. This committee and the Secretary of State are charged with the adoption of rules for conducting overseas absentee electronic voting, including the requirements for the request, receipt, voting, returning and processing an overseas absentee ballot. § 17-11-40 et. seq.

11.3.6 Certification of Returns

In general elections, the county canvassing board is to meet on the second Friday next after the election to canvass the election returns and make a correct statement reflecting the election results. § 17-12-15. Each county canvassing board then transmits the results for state and federal offices and proposed constitutional amendments, if any, to the Secretary of State. § 17-12-16. The state canvassing board comprised of the Governor, Secretary of State, and Attorney General, has 22 days after the election to certify the returns and determine which candidates are elected. § 17-12-17. After the returns are certified, the Governor proclaims the results of the election. § 17-12-18.

In primary elections, the county executive committee of the party or parties participating in a primary election meets at the courthouse of its county by noon on the Tuesday following the primary to receive, canvass, and tabulate returns. The returns are to be certified and returned to the chair of the state party executive committee by the close of business on the seventh day following the primary election. Also, the state executive committees shall meet in Montgomery to receive, canvass, and tabulate returns, publicly declare the results, and provide the Secretary of State with the primary returns at noon on the Wednesday eight days following the primary. § 17-13-17.

In the event of a runoff in the primary election, the canvassing board (local party officials for candidates and the judge of probate, sheriff, and circuit clerk for non-candidate matters) must meet at the courthouse to receive, canvass, and tabulate the returns from the second primary by the second Friday following runoff election. County returns from the runoff are to be certified to the state executive committee by the second Monday following the primary runoff. The state executive committee must convene in Montgomery to tabulate and certify the returns by noon on the third Wednesday following the runoff election. That same day, the state executive committee must provide the Secretary of State with those

returns. § 17-13-18.

11.3.7 State Plan for Elections

Alabama has established a state plan pursuant to the mandates of the federal Help America Vote Act. The law provides for the appointment of a committee to assist the Secretary of State in the development of a state plan. The committee consists of 23 members, including the judges of probate of the two most populous counties in the state, three additional county or municipal election officials appointed by the Secretary of State pursuant to certain recommendations, five individuals representing the interests of the electorate appointed by the Secretary of State pursuant to certain recommendations, three private citizens appointed by the Governor, five members of the state House of Representatives appointed by the Speaker of the House, two members of the state Senate appointed by the Lt. Governor, and three members of the Senate appointed by the President Pro Tempore of the Senate. The law also includes deadlines for appointment, term limits of committee members, and powers and duties of the committee. § 17-2-2.

11.3.8 Administrative Review of Complaints

The Secretary of State is directed to establish by rule procedures for the review of complaints on the state's administration of the federal HAVA. § 17-2-3. The Secretary of State has promulgated Chapter 820-2-5 of the Alabama Administrative Code to provide an administrative complaint procedure for allegations pertaining to violations of Title III of the federal Help America Vote Act of 2002.

Complaints must be submitted in writing, notarized, signed, and sworn by the complaining person. They may be submitted on a form created by the Secretary of State's Office for this purpose available at www.sos.alabama.gov. All complaints should identify one or more of the sections of Title III of HAVA alleged to have been violated. Complaints that fail to request a hearing are investigated by the staff or other designee(s) of the Secretary of State. Within 30 days from the receipt of the complaint, the investigator issues a written report and recommendation to the Secretary of State. The Secretary of State may reject, approve, or require additional investigation into some or all of the report and recommendation. Ala. Admin. Code r. 820-2-5-.02.

Upon the satisfaction of the Secretary of State that the investigation of the

complaint is sufficient, the Secretary of State will issue an order setting forth the findings, conclusions, and remedies. A copy of this order is to be mailed to each complainant. Complaints not resolved within 90 days from the date received are resolved through alternate dispute resolution. Orders which dismiss the complaint upon a determination that there has not been a violation of Title III are published by the office of Secretary of State on its Internet site within seven days of receipt or issuance of the order by the Secretary of State. If, under these procedures, a violation is found, the Secretary of State directs the appropriate legal remedy. Ala. Admin. Code rr. 820-2-5-.02 and .03.

11.3.9 Funding

A separate trust fund was created in the state treasury known as the Help America Vote Fund for funds used in accordance with HAVA. § 17-2-1.

11.3.10 Voting System Requirements

HAVA sets a list of requirements for voting systems. These requirements include that all voting systems permit the voter to verify the votes selected by the voter before the ballot is cast; that the voter has the opportunity to change their ballot or correct any error before the ballot is cast and counted; that the voter be notified if they have selected more than one candidate for a single office and have an opportunity to correct the mistake; that a record be produced with audit capacity for the voting system, consisting of a permanent paper record, etc. § 17-2-4

The error rate of the voting system must comply with the voting systems standards issued by the Federal Elections Commission. Those counties that purchase voting equipment in order to comply with these voting system guidelines are eligible for reimbursement from the Help America Vote Fund, in accordance with guidelines established by the State Plan Committee and the Secretary of State. HAVA also sets standards relating to disability and alternative language accessibility. § 17-2-4

11.4 Voter Registration

To be eligible to vote in Alabama elections, a person must register to vote. The Secretary of State is authorized to promulgate rules for the administration of voter registration applications. § 17-3-1. The Secretary of State is also in charge of Alabama's implementation of the National

Voter Registration Act of 1993. § 17-4-60. To fulfill this mandate the Secretary of State works in conjunction with the supervisor of voter registration. The Secretary of State also seeks comments and guidance from other election officials and agency officials to ensure a coordinated effort that addresses the needs and concerns of all participants while effectively meeting the requirements of the law. § 17-4-60.

Through statewide implementation of the National Voter Registration Act, the general population may register to vote through the mail. § 17-4-60. Absentee registration is contingent upon those involved being otherwise qualified voters under Alabama law. Ala. Const. Amend. 285, and 322; Ala. Code § 17-3-59. Persons may also register to vote electronically through a web site provided by the Secretary of State. To utilize this electronic application, a person must have a valid Alabama driver license or Alabama non-driver identification card and meet the eligibility requirements for applying for voter registration in the State of Alabama.

11.4.1 Qualification for Registration of a Voter

A person must meet certain requirements of age and citizenship to qualify as a voter. No person is entitled to vote unless they are 18 years of age and a citizen of the United States as prescribed in the Twenty-Sixth Amendment to the United States Constitution. Ala. Const. Art. VIII § 177.

The Secretary of State prescribes the voter registration form by administrative rule. § 17-3-52. Voters must register prior to the 14-day close of voter registration. The last day to register is the 15th day prior to the election. §§ 11-46-38 and 17-3-50.

Individuals adjudicated as mentally incompetent by a court and persons convicted of disqualifying felonies are disqualified from both registering and voting. Ala. Const. § 177. Enacted in 2017, the Felony Voter Disqualification Act identifies the disqualifying felonies for voting purposes. See Chapter 6 for a discussion of this list of disqualifying felonies. §17-3-30.1.

11.4.2 Denial of Registration and Judicial Review

When the board of registrars determines a person is not eligible to vote, the board must send notice of the denial and the specific reason to the applicant within 10 days of that determination. Individuals denied registration may appeal the decision of the board of registrars to the judge

of probate within 30 days of the denial. The judge of probate's decision may be appealed to the circuit court. §§ 17-3-54 and 17-3-55.

11.4.3 Disqualification by Death or Conviction

The Secretary of State, upon the receipt of the information that anyone age 18 or older has died or been convicted of a disqualifying felony, shall disseminate the information to the appropriate board of registrars to update the statewide voter registration list. § 17-4-6(b).

11.4.4 Permanent Disability Absentee Voter List

The Secretary of State maintains a permanent absentee voter list for voters who have a permanent disability which prevents his or her attendance at the polls on election day. Any voter placed on this list will have an absentee ballot mailed to them before each election held during the calendar year. §17-11-3.1.

The Secretary of State has adopted rules governing the permanent disability absentee voter list. Ala. Admin. Code r. 820-2-12. These rules will allow permanently disabled voters with medical documentation to apply annually to vote by absentee ballot. Applications are available on the Secretary of State's website and in this Handbook's Appendices. *See also, Chapter 7.*

11.5 Limited Post Election Audit for 2022

The Legislature authorized the Secretary of State to conduct a limited post-election audit for the November 8, 2022 statewide general election. This section does not apply to any other elections. § 17-16-90.

The Secretary of State may select up to three counties to participate in the audit and post the results on the counties' courthouse door as well as the Secretary of State's website. The Secretary must report all findings to the Governor and Legislature. § 17-16-90