

By: Chism, Nicholson, Smith (39th)

To: Apportionment and
Elections

HOUSE BILL NO. 749

1 AN ACT TO PROVIDE THAT AT ANY PRIMARY ELECTION, ALL QUALIFIED
2 ELECTORS SHALL BE ENTITLED TO VOTE FOR THE CANDIDATE OF THEIR
3 CHOICE FOR EACH OFFICE REGARDLESS OF THE PARTY AFFILIATION OF THE
4 CANDIDATE; TO PROVIDE THAT QUALIFIED ELECTORS MAY VOTE FOR ONLY
5 ONE CANDIDATE FOR EACH OFFICE AT A PRIMARY ELECTION; TO AMEND
6 SECTIONS 23-15-265, 23-15-267, 23-15-303, 23-15-333, 23-15-335 AND
7 23-15-597, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COUNTY
8 COMMISSIONERS OF ELECTION SHALL APPOINT MANAGERS AND CLERKS FOR
9 PRIMARY ELECTIONS UPON THE RECOMMENDATION OF THE COUNTY EXECUTIVE
10 COMMITTEE; TO PROVIDE THAT THE COMMISSIONERS OF ELECTION SHALL
11 APPOINT AN EQUAL NUMBER OF POLL WORKERS FROM EACH POLITICAL PARTY
12 THAT PARTICIPATES IN THE PRIMARY ELECTION; TO PROVIDE THAT THE
13 COUNTY COMMISSIONERS OF ELECTION SHALL DISTRIBUTE THE BALLOT BOXES
14 FOR PRIMARY ELECTIONS; TO PROVIDE THAT WHEN TWO OR MORE POLITICAL
15 PARTIES ARE HOLDING PRIMARY ELECTIONS, THE ELECTIONS SHALL BE
16 CONDUCTED TOGETHER; TO PROVIDE THAT THE COUNTY COMMISSIONERS OF
17 ELECTION SHALL PRINT ALL NECESSARY BALLOTS FOR PRIMARY ELECTIONS;
18 TO PROVIDE THAT THE PRIMARY ELECTION BALLOT SHALL CONTAIN THE
19 NAMES OF ALL THE CANDIDATES OF ALL THE POLITICAL PARTIES
20 PARTICIPATING IN THE PRIMARY ELECTION; TO PROVIDE THAT THE TITLE
21 OF EACH OFFICE SHALL BE LISTED ON THE PRIMARY ELECTION BALLOT BY
22 PARTY AND THE CANDIDATES LISTED UNDER THE APPROPRIATE PARTY
23 DESIGNATION; TO PROVIDE THAT THE COUNTY COMMISSIONERS OF ELECTION
24 SHALL DESIGNATE THE PERSON WHOSE DUTY IT IS TO DISTRIBUTE THE
25 BALLOTS NECESSARY FOR USE IN PRIMARY ELECTIONS; TO PROVIDE THAT
26 THE STATE BOARD OF ELECTION COMMISSIONERS AND THE COUNTY
27 COMMISSIONERS OF ELECTION SHALL CANVASS THE RETURNS OF PRIMARY
28 ELECTIONS AND CERTIFY THE RESULT TO THE APPROPRIATE EXECUTIVE
29 COMMITTEE; TO AMEND SECTIONS 23-15-129, 23-15-171, 23-15-263,
30 23-15-295, 23-15-331, 23-15-403, 23-15-465 AND 23-15-507,
31 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
32 PURPOSES.

33 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

34 SECTION 1. At any primary election, all qualified electors
35 shall be entitled to vote for the candidate of their choice for
36 each office regardless of the party affiliation of the candidate.

37 Qualified electors may vote for only one (1) candidate for each
38 office at a primary election. If a qualified elector votes for
39 more than one (1) candidate for any one (1) office, the elector's
40 vote for that office shall not be counted.

41 SECTION 2. Section 23-15-265, Mississippi Code of 1972, is
42 amended as follows:[JU1]

43 23-15-265. The commissioners of election of each county
44 shall meet not less than two (2) weeks before the date of any
45 primary election and appoint the managers and clerks for
46 same * * *. The number of managers and clerks appointed by the
47 commissioners of election shall be the same number as
48 commissioners of election are allowed to appoint pursuant to
49 Sections 23-15-231 and 23-15-235. The commissioners of election
50 shall appoint managers and clerks pursuant to this section upon
51 the recommendation of the county executive committee. The
52 commissioners of election shall appoint an equal number of
53 managers and clerks from each political party that participates in
54 the primary election to serve at each precinct. If the county
55 commissioners of election fail to meet on the date named, supra,
56 further notice shall be given of the time and place of meeting.

57 SECTION 3. Section 23-15-267, Mississippi Code of 1972, is
58 amended as follows:[JU2]

59 23-15-267. The ballot boxes provided by the * * *
60 commissioners of election in each county shall be used in primary
61 elections, and the county commissioners of election shall
62 distribute them to the voting precincts of the county before the
63 time for opening the polls, in the same manner, as near as may be,
64 as that provided for in general elections. If an adjournment
65 shall take place after the polls are open and before all votes are
66 counted, the ballot box shall be securely locked so as to prevent
67 the admission into it or the taking of anything from it during the

68 time of adjournment; and the box shall be kept by one of the
69 managers, and the key by another of the managers, and the manager
70 having the box shall carefully keep it, and neither undertake to
71 open it himself or permit it to be done, or to permit any person
72 to have access to it during the time of adjournment. The box
73 shall not be removed from the polling building or place after the
74 polls are open until the count is completed if as many as three
75 (3) electors qualified to vote at the election object. After each
76 election, the ballot boxes of those provided by the * * *
77 commissioners of election shall be delivered, with the keys
78 thereof immediately and as soon thereafter as possible, and
79 without delay to the clerk of the circuit court of the county.
80 The person, or persons, whose duty it is to comply with the
81 provisions of this section and who shall fail, or neglect, for any
82 cause, to deliver said boxes or any of them as * * * provided for
83 in this section shall, upon conviction, be fined not less than Two
84 Hundred Dollars (\$200.00) and be imprisoned in the county jail of
85 the residence of the person, or persons, who violates any of the
86 provisions of this section, for a period of not less than thirty
87 (30) days or more than six (6) months, and fined not more than
88 Five Hundred Dollars (\$500.00).

89 SECTION 4. Section 23-15-303, Mississippi Code of 1972, is
90 amended as follows:[JU3]

91 23-15-303. When two (2) or more political parties or
92 political organizations are holding primary elections, each shall
93 be conducted together and at the same time.

94 The board of supervisors or the supervisor of the district in
95 which the voting precinct is located shall have authority, and it

96 is made its and his duty when requested, to specifically designate
97 the respective places where the precinct primary election * * *
98 shall be held where there may be a dispute as to the room or exact
99 place for holding such precinct elections.

100 SECTION 5. Section 23-15-333, Mississippi Code of 1972, is
101 amended as follows:[JU4]

102 23-15-333. The commissioners of election of each county
103 shall have printed all necessary ballots, for use in primary
104 elections. The ballots shall contain the names of all the
105 candidates of all the political parties participating in the
106 primary election to be voted for at such election. The title of
107 each office shall be listed by party and the candidates listed
108 under the appropriate party designation. * * * There shall be
109 left on each ballot one (1) blank space under the title of each
110 office for which a nominee is to be elected; and in the event of
111 the death of any candidate whose name shall have been printed on
112 the ballot, the name of the candidate duly substituted in the
113 place of the deceased candidate may be written in such blank space
114 by the voter. The order in which the titles to the various
115 offices shall be printed, and the size, print and quality of the
116 paper of the ballot is left to the discretion of the commissioners
117 of election. Provided, however, that in all cases the arrangement
118 of the names of the candidates for each office shall be
119 alphabetical. No ballot shall be used except those so printed.

120 The commissioners of election shall also prepare full
121 instructions for the guidance of electors at elections as to
122 obtaining ballots, the manner of marking them, and the mode of
123 obtaining new ballots in the place of those spoiled by accident.

124 The instructions shall be printed in large, clear type on "Cards
125 of Instruction," and the commissioners of election shall furnish
126 the same in sufficient numbers for the use of electors. The cards
127 shall be preserved by the officers of election and returned by
128 them to the commissioners of election and they may be used, if
129 applicable, in subsequent elections.

130 SECTION 6. Section 23-15-335, Mississippi Code of 1972, is
131 amended as follows:[JU5]

132 23-15-335. The commissioners of election of each county
133 shall designate a person whose duty it shall be to distribute all
134 necessary ballots for use in a primary election, and shall
135 designate one (1) among the managers at each polling place to
136 receive and receipt for the blank ballots to be used at that
137 place. When the blank ballots are delivered to a local manager,
138 the distributor shall take from the local manager a receipt
139 therefor signed in duplicate by both the distributor and the
140 manager, one of which receipts the distributor shall deliver to
141 the circuit clerk and the other shall be retained by the local
142 manager and said last mentioned duplicate receipt shall be
143 enclosed in the ballot box with the voted ballots when the polls
144 have been closed and the votes have been counted. The printer of
145 the ballots shall take a receipt from the distributor of the
146 ballots for the total number of the blank ballots delivered to the
147 distributor. The printer shall secure all ballots printed by him
148 in such a safe manner that no person can procure them or any of
149 them, and he shall deliver no blank ballot or ballots to any
150 person except the distributor above mentioned, and then only upon
151 his receipt therefor as above specified. The distributor of the

152 blank ballots shall so securely hold the same that no person can
153 obtain any of them, and he shall not deliver any of them to any
154 person other than to the authorized local managers and upon their
155 respective receipts therefor. The commissioners of election shall
156 see to it that the total blank ballots delivered to the
157 distributor, shall correspond with the total of the receipts
158 executed by the local managers. Any person charged with any of
159 the duties prescribed in this section who shall willfully or with
160 culpable carelessness violate the same shall be guilty of a
161 misdemeanor.

162 SECTION 7. Section 23-15-597, Mississippi Code of 1972, is
163 amended as follows:[JU6]

164 23-15-597. The commissioners of election of each county
165 shall meet on the first or second day after each primary election,
166 shall receive and canvass the returns which must be made within
167 the time fixed by law for returns of general elections and certify
168 the result to the county executive committee. The county
169 executive committee shall * * * announce the name of the nominees
170 for county and county district offices and legislative offices for
171 districts containing one (1) county or less, and the names of
172 those candidates to be submitted to the second primary. The vote
173 for state and state district offices and legislative offices for
174 districts containing more than one (1) county or parts of more
175 than one (1) county shall be tabulated by precincts and certified
176 to and returned to the State Board of Election Commissioners, such
177 returns to be mailed by registered letter or any safe mode of
178 transmission within thirty-six (36) hours after the returns are
179 canvassed and the result ascertained. The State Board of Election

180 Commissioners shall meet a week from the day following the first
181 primary election held for state and state district offices and
182 legislative offices for districts containing more than one (1)
183 county or parts of more than one (1) county, and shall proceed to
184 canvass the returns and to certify the result to the State
185 Executive Committee. The State Executive Committee shall * * *
186 announce the names of those nominated for the different offices in
187 the first primary and the names of those candidates whose names
188 are to be submitted to the second primary election. The State
189 Board of Election Commissioners shall also meet a week from the
190 day on which the second primary election was held and receive and
191 canvass the returns for state and district offices, if any, and
192 legislative offices for districts containing more than one (1)
193 county or parts of more than one (1) county, if any, voted on in
194 such second primary and certify the result to the State Executive
195 Committee. An exact and full duplicate of all tabulations by
196 precincts as certified under this section shall be filed with the
197 circuit clerk of the county who shall safely preserve the same in
198 his office.

199 SECTION 8. Section 23-15-129, Mississippi Code of 1972, is
200 amended as follows:[JU7]

201 23-15-129. The commissioners of election and the registrars
202 of the respective counties are hereby directed to make an
203 administrative division of the pollbook for each county
204 immediately following any reapportionment of the Mississippi
205 Legislature or any realignment of supervisors districts, if
206 necessary. Such an administrative division shall form
207 subprecincts whenever necessary within each voting precinct so

208 that all persons within a subprecinct shall vote on the same
209 candidates for each public office. Separate pollbooks for each
210 subprecinct shall be made. The polling place for all subprecincts
211 within any given voting precinct shall be the same as the polling
212 place for the voting precinct. Additional managers may be
213 appointed for subprecincts in the discretion of the commissioners
214 of election * * *.

215 SECTION 9. Section 23-15-171, Mississippi Code of 1972, is
216 amended as follows:[JU8]

217 23-15-171. (1) Municipal primary elections shall be held on
218 the first Tuesday in May preceding the general municipal election
219 and, in the event a second primary shall be necessary, such second
220 primary shall be held on the third Tuesday in May preceding such
221 general municipal election.

222 (2) At municipal primary elections the municipal executive
223 committee shall perform the same duties as are specified by law
224 and performed by members of the county executive committee with
225 regard to state and county primary elections. Each municipal
226 executive committee shall have as many members as there are
227 elective officers of the municipality, and such members of the
228 municipal executive committee of each political party shall be
229 elected in the primary elections held for the nomination of
230 candidates for municipal offices.

231 (3) The municipal commissioners of election shall perform
232 all duties specified by law to be performed by the county
233 commissioners of election with regard to state and county primary
234 elections.

235 (4) The provisions of this section shall govern all

236 municipal primary elections as far as applicable, but * * * the
237 returns of such election shall be made to such municipal executive
238 committee. Vacancies in the executive committee shall be filled
239 by it.

240 (5) Provided, however, that in municipalities operating
241 under a special or private charter which fixes a time for holding
242 elections, other than the time fixed by Chapter 491, Laws of 1950,
243 the first primary election shall be held exactly four (4) weeks
244 before the time for holding the general election, as fixed by the
245 charter, and the second primary election, where necessary, shall
246 be held two (2) weeks after the first primary election, unless the
247 charter of any such municipality provides otherwise, in which
248 event the provisions of the special or private charter shall
249 prevail as to the time of holding such primary elections.

250 (6) All primary elections in municipalities shall be held
251 and conducted in the same manner as is provided by law for state
252 and county primary elections.

253 SECTION 10. Section 23-15-263, Mississippi Code of 1972, is
254 amended as follows:[JU9]

255 23-15-263. (1) The county commissioners of election shall
256 perform all the duties specified by law to be performed by the
257 county commissioners of election with regard to state and county
258 primary elections.

259 (2) Unless otherwise provided in this chapter, the county
260 executive committee at primary elections shall perform all duties
261 that relate to the qualification of candidates for primary
262 elections, * * * resolve contests in regard to primary elections,
263 and perform all other duties required by law to be performed by

264 the county executive committee; however, each house of the
265 Legislature shall rule on the qualifications of the membership of
266 its respective body in contests involving the qualifications of
267 such members. The executive committee shall be subject to all the
268 penalties to which county election commissioners are subject,
269 except that Section 23-15-217 shall not apply to members of the
270 county executive committee who seek elective office.

271 (3) A member of a county executive committee shall be
272 automatically disqualified to serve on the county executive
273 committee, and shall be considered to have resigned therefrom,
274 upon his qualification as a candidate for any elective office.
275 The provisions of this subsection shall not apply to a member of a
276 county executive committee who qualifies as a candidate for a
277 municipal elective office.

278 (4) The primary election officers appointed by the
279 commissioners of election shall have the powers and perform the
280 duties, where not otherwise provided, required of such officers in
281 a general election, and any and every act or omission which by law
282 is an offense when committed in or about or in respect to such
283 general elections, shall be an offense if committed in or about or
284 in respect to a primary election; and the same shall be indictable
285 and punishable in the same way as if the election was a general
286 election for the election of state and county officers, except as
287 specially modified or otherwise provided in this chapter.

288 SECTION 11. Section 23-15-295, Mississippi Code of 1972, is
289 amended as follows:[JU10]

290 23-15-295. When any person has qualified in the manner
291 provided by law as a candidate for party nomination in any primary

292 election, such person shall have the right to withdraw his name as
293 a candidate by giving notice of his withdrawal in writing to the
294 secretary of the proper executive committee at any time prior to
295 the printing of the official ballots, and in the event of such
296 withdrawal the name of such candidate shall not be printed on the
297 ballot. When a candidate for party nomination for a state or
298 district office who has qualified with the State Executive
299 Committee withdraws as a candidate as provided for in this section
300 after the sample of the official ballot has been approved and
301 certified by the State Executive Committee, the Secretary or
302 Chairman of the State Executive Committee shall forthwith notify
303 the commissioners of election of each county affected or involved
304 of the fact of such withdrawal and such notification shall
305 authorize the commissioners of election to omit the name of the
306 withdrawn candidate from the ballot if such notification is
307 received prior to the printing of the ballot. In the case of the
308 withdrawal of any candidate, the fee paid by such candidate shall
309 be retained by the state or county executive committee, as the
310 case may be.

311 SECTION 12. Section 23-15-331, Mississippi Code of 1972, is
312 amended as follows:[JU11]

313 23-15-331. It shall be the duty of the State Executive
314 Committee of each political party to furnish to the commissioners
315 of election of each county, not less than fifty (50) days prior to
316 the primary election, the names of all state and state district
317 candidates and all candidates for legislative districts composed
318 of more than one county or parts of more than one county who have
319 qualified as provided by law, and in accordance with the

320 requirements of Section 23-15-333 a sample of the official ballot
321 to be used in the primary, the general form of which shall be
322 followed as nearly as practicable.

323 SECTION 13. Section 23-15-403, Mississippi Code of 1972, is
324 amended as follows:[JU12]

325 23-15-403. The board of supervisors of any county in the
326 State of Mississippi and the governing authorities of any
327 municipality in the State of Mississippi are hereby authorized and
328 empowered, in their discretion, to purchase or rent any voting
329 machine or machines which shall be so constructed as to fulfill
330 the following requirements:

331 (a) It shall secure to the voter secrecy in the act of
332 voting;

333 (b) It shall provide facilities for voting for all
334 candidates of as many political parties or organizations as may
335 make nominations, and for or against as many questions as
336 submitted;

337 (c) It shall * * * permit the voter to vote for all the
338 candidates of one party or in * * * part for the candidates of one
339 or more other parties;

340 (d) It shall permit the voter to vote for as many
341 persons for an office as he is lawfully entitled to vote for, but
342 not more;

343 (e) It shall prevent the voter from voting for the same
344 person more than once for the same office;

345 (f) It shall permit the voter to vote for or against
346 any question he may have the right to vote on, but no other; * * *

347 (g) It shall correctly register or record and

348 accurately count all votes cast for any and all persons and for or
349 against any and all questions;

350 (h) It shall be provided with a "protective counter" or
351 "protective device" whereby any operation of the machine before or
352 after the election will be detected;

353 (i) It shall be provided with a counter which shall
354 show at all times during an election how many persons have voted;

355 (j) It shall be provided with a mechanical model,
356 illustrating the manner of voting on the machine, suitable for the
357 instruction of voters;

358 (k) It may also be provided with a device * * * for
359 voting for all the presidential electors of a party by one (1)
360 operation, and a ballot therefor containing only the words
361 "Presidential Electors For" preceded by the name of that party and
362 followed by the names of the candidates thereof for the offices of
363 President and Vice President, and a registering device therefor
364 which shall register the vote cast for said electors when thus
365 voted collectively; provided, however, that means shall be
366 furnished whereby the voter can cast a vote for individual
367 electors when permitted to do so by law.

368 SECTION 14. Section 23-15-465, Mississippi Code of 1972, is
369 amended as follows:[JU13]

370 23-15-465. No electronic voting system, consisting of a
371 marking or voting device in combination with automatic tabulating
372 equipment, shall be acquired or used in accordance with Sections
373 23-15-461 through 23-15-485 unless it shall:

374 (a) Provide for voting in secrecy when used with voting
375 booths;

376 (b) Permit each voter to vote at any election for all
377 persons and offices for whom and for which he is lawfully entitled
378 to vote; to vote for as many persons for an office as he is
379 entitled to vote for; to vote for or against any question upon
380 which he is entitled to vote; and the automatic tabulating
381 equipment shall reject choices recorded on his ballot card or
382 paper ballot if the number of choices exceeds the number which he
383 is entitled to vote for the office or on the measure;

384 (c) Permit each voter, at presidential elections, by
385 one (1) mark or punch to vote for the candidates of that party for
386 President, Vice President, and their presidential electors, or to
387 vote individually for the electors of his choice when permitted by
388 law;

389 (d) Permit each voter * * * to vote for the nominees of
390 one or more parties and for independent nominees;

391 (e) Permit each voter to vote for candidates only in
392 the primary in which he is qualified to vote;

393 (f) Permit each voter to vote for persons whose names
394 are not on the printed ballot or ballot labels;

395 (g) Prevent the voter from voting for the same person
396 more than once for the same office;

397 (h) Be suitably designed for the purpose used, of
398 durable construction, and may be used safely, efficiently and
399 accurately in the conduct of elections and counting ballots;

400 (i) Be provided with means for sealing the voting or
401 marking device against any further voting after the close of the
402 polls and the last voter has voted;

403 (j) When properly operated, record correctly and count

404 accurately every vote cast;

405 (k) Be provided with a mechanical model for instructing
406 voters, and be so constructed that a voter may readily learn the
407 method of operating it;

408 (l) Be safely transportable, and include a light to
409 enable voters to read the ballot labels and instructions.

410 SECTION 15. Section 23-15-507, Mississippi Code of 1972, is
411 amended as follows:[JU14]

412 23-15-507. No optical mark reading system shall be acquired
413 or used in accordance with this chapter unless it shall:

414 (a) Permit each voter to vote at any election for all
415 persons and no others for whom and for which they are lawfully
416 entitled to vote; to vote for as many persons for an office as
417 they are entitled to vote for; to vote for or against any
418 questions upon which they are entitled to vote;

419 (b) The OMR tabulating equipment shall be capable of
420 rejecting choices recorded on the ballot if the number of choices
421 exceeds the number which the voter is entitled to vote for the
422 office or on the measure;

423 (c) Permit each voter, at presidential elections, by
424 one (1) mark to vote for the candidates of that party for
425 President, Vice President, and their presidential electors, or to
426 vote individually for the electors of their choice when permitted
427 by law;

428 (d) Permit each voter * * * to vote for the nominees of
429 one or more parties and for independent nominees;

430 (e) Permit each voter to vote for candidates only in
431 the primary in which they are qualified to vote;

432 (f) Permit each voter to vote for persons whose names
433 are not on the printed ballot;

434 (g) Be suitably designed for the purpose used, of
435 durable construction, and may be used safely, efficiently and
436 accurately in the conduct of elections and the counting of
437 ballots;

438 (h) Be provided with means for sealing the ballots
439 after the close of the polls and the last voter has voted;

440 (i) When properly operated, record correctly and count
441 accurately all votes cast; and

442 (j) Provide the voter with a set of instructions that
443 will be so displayed that a voter may readily learn the method of
444 voting.

445 SECTION 16. The Attorney General of the State of Mississippi
446 shall submit this act, immediately upon approval by the Governor,
447 or upon approval by the Legislature subsequent to a veto, to the
448 Attorney General of the United States or to the United States
449 District Court for the District of Columbia in accordance with the
450 provisions of the Voting Rights Act of 1965, as amended and
451 extended.

452 SECTION 17. This act shall take effect and be in force from
453 and after the date it is effectuated under Section 5 of the Voting
454 Rights Act of 1965, as amended and extended.