

By: Representative Robinson (84th)

To: Apportionment and
Elections

HOUSE BILL NO. 792

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:



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:

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:

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:

102 23-15-333. (1) 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 left on



109 each ballot one (1) blank space under the title of each office for
110 which a nominee is to be elected; and in the event of the death of
111 any candidate whose name shall have been printed on the ballot,
112 the name of the candidate duly substituted in the place of the
113 deceased candidate may be written in such blank space by the
114 voter. Except as otherwise provided in subsection (2) of this
115 section, the order in which the titles to the various offices
116 shall be printed, and the size, print and quality of the paper of
117 the ballot is left to the discretion of the commissioners of
118 election. Provided, however, that in all cases the arrangement of
119 the names of the candidates for each office shall be alphabetical.
120 No ballot shall be used except those so printed.

121 (2) The titles for the various offices shall be listed in
122 the following order:

- 123 (a) Candidates for national office;
- 124 (b) Candidates for statewide office;
- 125 (c) Candidates for state district office;
- 126 (d) Candidates for legislative office;
- 127 (e) Candidates for countywide office;
- 128 (f) Candidates for county district office.

129 The order in which the titles for the various offices are
130 listed within each of the categories listed in this subsection is
131 left to the discretion of the commissioners of election.

132 (3) The commissioners of election shall also prepare full
133 instructions for the guidance of electors at elections as to
134 obtaining ballots, the manner of marking them, and the mode of
135 obtaining new ballots in the place of those spoiled by accident.
136 The instructions shall be printed in large, clear type on "Cards
137 of Instruction," and the commissioners of election shall furnish
138 the same in sufficient numbers for the use of electors. The cards
139 shall be preserved by the officers of election and returned by
140 them to the commissioners of election and they may be used, if
141 applicable, in subsequent elections.



142 SECTION 6. Section 23-15-335, Mississippi Code of 1972, is
143 amended as follows:

144 23-15-335. The commissioners of election of each county
145 shall designate a person whose duty it shall be to distribute all
146 necessary ballots for use in a primary election, and shall
147 designate one (1) among the managers at each polling place to
148 receive and receipt for the blank ballots to be used at that
149 place. When the blank ballots are delivered to a local manager,
150 the distributor shall take from the local manager a receipt
151 therefor signed in duplicate by both the distributor and the
152 manager, one of which receipts the distributor shall deliver to
153 the circuit clerk and the other shall be retained by the local
154 manager and said last mentioned duplicate receipt shall be
155 enclosed in the ballot box with the voted ballots when the polls
156 have been closed and the votes have been counted. The printer of
157 the ballots shall take a receipt from the distributor of the
158 ballots for the total number of the blank ballots delivered to the
159 distributor. The printer shall secure all ballots printed by him
160 in such a safe manner that no person can procure them or any of
161 them, and he shall deliver no blank ballot or ballots to any
162 person except the distributor above mentioned, and then only upon
163 his receipt therefor as above specified. The distributor of the
164 blank ballots shall so securely hold the same that no person can
165 obtain any of them, and he shall not deliver any of them to any
166 person other than to the authorized local managers and upon their
167 respective receipts therefor. The commissioners of election shall
168 see to it that the total blank ballots delivered to the
169 distributor, shall correspond with the total of the receipts
170 executed by the local managers. Any person charged with any of
171 the duties prescribed in this section who shall willfully or with
172 culpable carelessness violate the same shall be guilty of a
173 misdemeanor.



174 SECTION 7. Section 23-15-597, Mississippi Code of 1972, is
175 amended as follows:

176 23-15-597. The commissioners of election of each county
177 shall meet on the first or second day after each primary election,
178 shall receive and canvass the returns which must be made within
179 the time fixed by law for returns of general elections and certify
180 the result to the county executive committee. The county
181 executive committee shall * * * announce the name of the nominees
182 for county and county district offices and legislative offices for
183 districts containing one (1) county or less, and the names of
184 those candidates to be submitted to the second primary. The vote
185 for state and state district offices and legislative offices for
186 districts containing more than one (1) county or parts of more
187 than one (1) county shall be tabulated by precincts and certified
188 to and returned to the State Board of Election Commissioners, such
189 returns to be mailed by registered letter or any safe mode of
190 transmission within thirty-six (36) hours after the returns are
191 canvassed and the result ascertained. The State Board of Election
192 Commissioners shall meet a week from the day following the first
193 primary election held for state and state district offices and
194 legislative offices for districts containing more than one (1)
195 county or parts of more than one (1) county, and shall proceed to
196 canvass the returns and to certify the result to the State
197 Executive Committee. The State Executive Committee shall * * *
198 announce the names of those nominated for the different offices in
199 the first primary and the names of those candidates whose names
200 are to be submitted to the second primary election. The State
201 Board of Election Commissioners shall also meet a week from the
202 day on which the second primary election was held and receive and
203 canvass the returns for state and district offices, if any, and
204 legislative offices for districts containing more than one (1)
205 county or parts of more than one (1) county, if any, voted on in
206 such second primary and certify the result to the State Executive



207 Committee. An exact and full duplicate of all tabulations by
208 precincts as certified under this section shall be filed with the
209 circuit clerk of the county who shall safely preserve the same in
210 his office.

211 SECTION 8. Section 23-15-129, Mississippi Code of 1972, is
212 amended as follows:

213 23-15-129. The commissioners of election and the registrars
214 of the respective counties are hereby directed to make an
215 administrative division of the pollbook for each county
216 immediately following any reapportionment of the Mississippi
217 Legislature or any realignment of supervisors districts, if
218 necessary. Such an administrative division shall form
219 subprecincts whenever necessary within each voting precinct so
220 that all persons within a subprecinct shall vote on the same
221 candidates for each public office. Separate pollbooks for each
222 subprecinct shall be made. The polling place for all subprecincts
223 within any given voting precinct shall be the same as the polling
224 place for the voting precinct. Additional managers may be
225 appointed for subprecincts in the discretion of the commissioners
226 of election * * *.

227 SECTION 9. Section 23-15-171, Mississippi Code of 1972, is
228 amended as follows:

229 23-15-171. (1) Municipal primary elections shall be held on
230 the first Tuesday in May preceding the general municipal election
231 and, in the event a second primary shall be necessary, such second
232 primary shall be held on the third Tuesday in May preceding such
233 general municipal election.

234 (2) At municipal primary elections the municipal executive
235 committee shall perform the same duties as are specified by law
236 and performed by members of the county executive committee with
237 regard to state and county primary elections. Each municipal
238 executive committee shall have as many members as there are
239 elective officers of the municipality, and such members of the



240 municipal executive committee of each political party shall be
241 elected in the primary elections held for the nomination of
242 candidates for municipal offices.

243 (3) The municipal commissioners of election shall perform
244 all duties specified by law to be performed by the county
245 commissioners of election with regard to state and county primary
246 elections.

247 (4) The provisions of this section shall govern all
248 municipal primary elections as far as applicable, but * * * the
249 returns of such election shall be made to such municipal executive
250 committee. Vacancies in the executive committee shall be filled
251 by it.

252 (5) Provided, however, that in municipalities operating
253 under a special or private charter which fixes a time for holding
254 elections, other than the time fixed by Chapter 491, Laws of 1950,
255 the first primary election shall be held exactly four (4) weeks
256 before the time for holding the general election, as fixed by the
257 charter, and the second primary election, where necessary, shall
258 be held two (2) weeks after the first primary election, unless the
259 charter of any such municipality provides otherwise, in which
260 event the provisions of the special or private charter shall
261 prevail as to the time of holding such primary elections.

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

265 SECTION 10. Section 23-15-263, Mississippi Code of 1972, is
266 amended as follows:

267 23-15-263. (1) The county commissioners of election shall
268 perform all the duties specified by law to be performed by the
269 county commissioners of election with regard to state and county
270 primary elections.

271 (2) Unless otherwise provided in this chapter, the county
272 executive committee at primary elections shall perform all duties



273 that relate to the qualification of candidates for primary
274 elections, * * * resolve contests in regard to primary elections,
275 and perform all other duties required by law to be performed by
276 the county executive committee; however, each house of the
277 Legislature shall rule on the qualifications of the membership of
278 its respective body in contests involving the qualifications of
279 such members. The executive committee shall be subject to all the
280 penalties to which county election commissioners are subject,
281 except that Section 23-15-217 shall not apply to members of the
282 county executive committee who seek elective office.

283 (3) A member of a county executive committee shall be
284 automatically disqualified to serve on the county executive
285 committee, and shall be considered to have resigned therefrom,
286 upon his qualification as a candidate for any elective office.
287 The provisions of this subsection shall not apply to a member of a
288 county executive committee who qualifies as a candidate for a
289 municipal elective office.

290 (4) The primary election officers appointed by the
291 commissioners of election shall have the powers and perform the
292 duties, where not otherwise provided, required of such officers in
293 a general election, and any and every act or omission which by law
294 is an offense when committed in or about or in respect to such
295 general elections, shall be an offense if committed in or about or
296 in respect to a primary election; and the same shall be indictable
297 and punishable in the same way as if the election was a general
298 election for the election of state and county officers, except as
299 specially modified or otherwise provided in this chapter.

300 SECTION 11. Section 23-15-295, Mississippi Code of 1972, is
301 amended as follows:

302 23-15-295. When any person has qualified in the manner
303 provided by law as a candidate for party nomination in any primary
304 election, such person shall have the right to withdraw his name as
305 a candidate by giving notice of his withdrawal in writing to the



306 secretary of the proper executive committee at any time prior to
307 the printing of the official ballots, and in the event of such
308 withdrawal the name of such candidate shall not be printed on the
309 ballot. When a candidate for party nomination for a state or
310 district office who has qualified with the State Executive
311 Committee withdraws as a candidate as provided for in this section
312 after the sample of the official ballot has been approved and
313 certified by the State Executive Committee, the Secretary or
314 Chairman of the State Executive Committee shall forthwith notify
315 the commissioners of election of each county affected or involved
316 of the fact of such withdrawal and such notification shall
317 authorize the commissioners of election to omit the name of the
318 withdrawn candidate from the ballot if such notification is
319 received prior to the printing of the ballot. In the case of the
320 withdrawal of any candidate, the fee paid by such candidate shall
321 be retained by the state or county executive committee, as the
322 case may be.

323 SECTION 12. Section 23-15-331, Mississippi Code of 1972, is
324 amended as follows:

325 23-15-331. It shall be the duty of the State Executive
326 Committee of each political party to furnish to the commissioners
327 of election of each county, not less than fifty (50) days prior to
328 the primary election, the names of all state and state district
329 candidates and all candidates for legislative districts composed
330 of more than one county or parts of more than one county who have
331 qualified as provided by law, and in accordance with the
332 requirements of Section 23-15-333 a sample of the official ballot
333 to be used in the primary, the general form of which shall be
334 followed as nearly as practicable.

335 SECTION 13. Section 23-15-403, Mississippi Code of 1972, is
336 amended as follows:

337 23-15-403. The board of supervisors of any county in the
338 State of Mississippi and the governing authorities of any



339 municipality in the State of Mississippi are hereby authorized and
340 empowered, in their discretion, to purchase or rent any voting
341 machine or machines which shall be so constructed as to fulfill
342 the following requirements:

343 (a) It shall secure to the voter secrecy in the act of
344 voting;

345 (b) It shall provide facilities for voting for all
346 candidates of as many political parties or organizations as may
347 make nominations, and for or against as many questions as
348 submitted;

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

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

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

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

359 (g) It shall correctly register or record and
360 accurately count all votes cast for any and all persons and for or
361 against any and all questions;

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

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

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

370 (k) It may also be provided with a device * * * for
371 voting for all the presidential electors of a party by one (1)



372 operation, and a ballot therefor containing only the words
373 "Presidential Electors For" preceded by the name of that party and
374 followed by the names of the candidates thereof for the offices of
375 President and Vice President, and a registering device therefor
376 which shall register the vote cast for said electors when thus
377 voted collectively; provided, however, that means shall be
378 furnished whereby the voter can cast a vote for individual
379 electors when permitted to do so by law.

380 SECTION 14. Section 23-15-465, Mississippi Code of 1972, is
381 amended as follows:

382 23-15-465. No electronic voting system, consisting of a
383 marking or voting device in combination with automatic tabulating
384 equipment, shall be acquired or used in accordance with Sections
385 23-15-461 through 23-15-485 unless it shall:

386 (a) Provide for voting in secrecy when used with voting
387 booths;

388 (b) Permit each voter to vote at any election for all
389 persons and offices for whom and for which he is lawfully entitled
390 to vote; to vote for as many persons for an office as he is
391 entitled to vote for; to vote for or against any question upon
392 which he is entitled to vote; and the automatic tabulating
393 equipment shall reject choices recorded on his ballot card or
394 paper ballot if the number of choices exceeds the number which he
395 is entitled to vote for the office or on the measure;

396 (c) Permit each voter, at presidential elections, by
397 one (1) mark or punch to vote for the candidates of that party for
398 President, Vice President, and their presidential electors, or to
399 vote individually for the electors of his choice when permitted by
400 law;

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

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



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

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

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

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

415 (j) When properly operated, record correctly and count
416 accurately every vote cast;

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

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

422 SECTION 15. Section 23-15-507, Mississippi Code of 1972, is
423 amended as follows:

424 23-15-507. No optical mark reading system shall be acquired
425 or used in accordance with this chapter unless it shall:

426 (a) Permit each voter to vote at any election for all
427 persons and no others for whom and for which they are lawfully
428 entitled to vote; to vote for as many persons for an office as
429 they are entitled to vote for; to vote for or against any
430 questions upon which they are entitled to vote;

431 (b) The OMR tabulating equipment shall be capable of
432 rejecting choices recorded on the ballot if the number of choices
433 exceeds the number which the voter is entitled to vote for the
434 office or on the measure;

435 (c) Permit each voter, at presidential elections, by
436 one (1) mark to vote for the candidates of that party for
437 President, Vice President, and their presidential electors, or to



438 vote individually for the electors of their choice when permitted
439 by law;

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

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

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

446 (g) Be suitably designed for the purpose used, of
447 durable construction, and may be used safely, efficiently and
448 accurately in the conduct of elections and the counting of
449 ballots;

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

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

454 (j) Provide the voter with a set of instructions that
455 will be so displayed that a voter may readily learn the method of
456 voting.

457 SECTION 16. The Attorney General of the State of Mississippi
458 shall submit this act, immediately upon approval by the Governor,
459 or upon approval by the Legislature subsequent to a veto, to the
460 Attorney General of the United States or to the United States
461 District Court for the District of Columbia in accordance with the
462 provisions of the Voting Rights Act of 1965, as amended and
463 extended.

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

