

By: Representative Scott (80th)

To: Apportionment and Elections

HOUSE BILL NO. 1218

1 AN ACT TO AMEND SECTION 23-15-523, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE FOR THE COMPOSITION OF THE RESOLUTION BOARD IN COUNTIES
 3 THAT UTILIZE OPTICAL MARK READING SYSTEMS IN CONDUCTING ELECTIONS;
 4 TO REQUIRE THAT A CIRCUIT COURT JUDGE SERVE ON THE BOARD; TO
 5 PROVIDE FOR AN ALTERNATE METHOD OF COUNTING DAMAGED OR DEFECTIVE
 6 BALLOTS IN SUCH COUNTIES; TO ESTABLISH STANDARDS BY WHICH OPTICAL
 7 MARK READING EQUIPMENT BALLOTS ON WHICH THE VOTER HAS FAILED TO
 8 MARK IN ACCORDANCE WITH THE BALLOT INSTRUCTIONS SHALL BE EXAMINED
 9 BY THE RESOLUTION BOARD TO DETERMINE THE INTENT OF THE VOTER; TO
 10 ESTABLISH STANDARDS BY WHICH OPTICAL MARK READING EQUIPMENT
 11 BALLOTS WHICH CONTAIN OVERVOTES, ARE DAMAGED OR DEFECTIVE OR
 12 CANNOT BE COUNTED BY THE OPTICAL MARK TABULATING EQUIPMENT FOR ANY
 13 REASON, ARE COUNTED; TO PROVIDE WHEN OPTICAL MARK READING BALLOTS
 14 MAY BE MANUALLY COUNTED BY THE RESOLUTION BOARD; TO AMEND SECTION
 15 23-15-461, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "CHAD"
 16 WITH REGARD TO ELECTRONIC VOTING SYSTEM BALLOTS; TO AMEND SECTION
 17 23-15-483, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
 18 APPOINTMENT OF A RESOLUTION BOARD TO REVIEW DAMAGED OR DEFECTIVE
 19 ELECTRONIC VOTING SYSTEM BALLOTS; TO PROVIDE THE MANNER IN WHICH
 20 SUCH BALLOTS MAY BE COUNTED; TO ESTABLISH STANDARDS FOR
 21 DETERMINING VOTER INTENT FOR SUCH BALLOTS; TO ESTABLISH STANDARDS
 22 BY WHICH ELECTRONIC VOTING SYSTEM BALLOTS WHICH CONTAIN OVERVOTES
 23 ARE COUNTED; TO PROVIDE WHEN ELECTRONIC VOTING SYSTEM BALLOTS MAY
 24 BE COUNTED MANUALLY; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 23-15-523, Mississippi Code of 1972, is
 27 amended as follows:

28 23-15-523. (1) All proceedings at the counting center shall
 29 be under the direction of the commissioners of elections or
 30 officials in charge of the election, and shall be conducted under
 31 the observations of the public, but no persons except those
 32 authorized for the purpose shall touch any ballot. All persons
 33 who are engaged in processing and counting of the ballots shall be
 34 deputized in writing and take oath that they will faithfully
 35 perform their assigned duties.

36 (2) The commissioners of elections or the officials in
 37 charge of the election shall appoint * * * qualified electors to
 38 serve as judges on the "resolution board." At least one (1)



39 member of the resolution board shall be a circuit court judge. At
40 general elections, members of the resolution board shall not be of
41 the same political party registered with the Office of the
42 Secretary of State in accordance with Section 23-15-1059 if
43 suitable persons of different political parties or members of the
44 public who have no political affiliation can be found. An odd
45 number of members shall be appointed to the resolution board. All
46 ballots that have been rejected by the OMR tabulating equipment
47 and that are damaged or defective, blank or overvoted will be
48 reviewed by said board.

49 (3) (a) If any ballot is damaged or defective so that it
50 cannot be properly counted by the OMR tabulating equipment, the
51 ballot will be deposited in an envelope provided for that purpose
52 marked "RESOLUTION BOARD." All such ballots shall be carefully
53 handled so as to avoid altering, removing or adding any mark on
54 the ballot.

55 (b) The commissioners of * * * election or the
56 officials in charge of the election shall have the judges on the
57 resolution board manually count any damaged or defective ballots,
58 who shall determine the intent of the voter and record the vote
59 consistent with this determination.

60 (c) As an alternative to the procedure provided for in
61 paragraph (b) of this subsection, the resolution board may be
62 instructed by the officials in charge of the election to prepare a
63 duplicate to the damaged or defective ballot in the following
64 manner:

65 (i) The resolution board shall prepare a duplicate
66 to the original damaged or defective ballot marked identically to
67 the original.

68 (ii) The resolution board shall mark the first
69 original they examine as "Original #1" and the duplicate of this
70 original as "Duplicate #1." Subsequent originals and duplicates
71 shall be likewise marked and numbered consecutively so the



72 duplicate of each original can be identified. Duplicate ballots
73 may be printed in a different color from the original ballots so
74 that they may be easily distinguished for the originals.

75 (iii) The duplicate ballots prepared pursuant to
76 this paragraph shall be counted by the OMR tabulating equipment.

77 (4) Ballots that have been rejected by the OMR tabulating
78 equipment for appearing to be "blank" shall be examined to verify
79 if they are blank or were marked with a "nondetectable" marking
80 device. If it is determined that the ballot was marked with a
81 nondetectable device, the resolution board may mark over the
82 voter's mark with a detectable marking device.

83 (5) All ballots that are rejected by the OMR tabulating
84 equipment and which contain overvotes shall be inspected by the
85 resolution board. Regarding those ballots upon which an overvote
86 appears and voter intent cannot be determined by inspection of the
87 resolution board, the officials in charge of the election may use
88 the OMR tabulating equipment in determining the vote in the races
89 which are unaffected by the overvote. All other ballots which are
90 overvoted shall be counted manually following the provisions of
91 this section at the direction of the officials in charge of the
92 election. If for any reason it becomes impracticable to count all
93 or a part of the ballots with the OMR tabulating equipment, the
94 officials in charge may direct that they be counted manually, and
95 voter intent shall be determined by following * * * the provisions
96 of this section. The return printed by the OMR tabulating
97 equipment to which have been added the manually tallied ballots,
98 which shall be duly certified by the officials in charge of the
99 election, shall constitute the official return of each voting
100 precinct. Unofficial and incomplete returns may be released
101 during the count. Upon the completion of the counting, the
102 official returns shall be open to the public.

103 (6) When the resolution board reviews any OMR ballot in
104 which the voter has failed to fill in the arrow, oval, circle or



105 square for a candidate or a ballot measure in accordance with the
106 ballot instruction, the resolution board shall, if the intent of
107 the voter can be ascertained, count the vote if:

108 (a) The voter marks the ballot with a "cross" (x) or
109 "check (√) mark" and the lines that form the mark intersect within
110 or on the line of the arrow, oval, circle or square by the ballot
111 measure or the name of the candidate.

112 (b) The voter blackens the arrow, oval, circle or
113 square adjacent to the ballot measure or the name of the candidate
114 in pencil or ink and the blackened portion extends beyond the
115 boundaries of the arrow, oval, circle or square.

116 (c) The voter marks the ballot with a "cross" (x) or
117 "check (√) mark" and the lines that form the mark intersect
118 adjacent to the ballot measure or the name of the candidate.

119 (d) The voter underlines the ballot measure or the name
120 of a candidate.

121 (e) The voter draws a line from the arrow, oval, circle
122 or square to a ballot measure or the name of a candidate.

123 (f) The voter draws a circle or oval around the ballot
124 measure or the name of the candidate.

125 (g) The voter draws a circle or oval around the arrow,
126 oval, circle or square adjacent to the ballot measure or the name
127 of the candidate.

128 (7) The resolution board, when inspecting an OMR ballot
129 which contains or appears to contain one or more overvotes,
130 appears to be damaged or defective, or is rejected by the OMR
131 tabulating equipment for any reason or cannot be counted by the
132 OMR tabulating equipment, shall make its determination in
133 accordance with the following:

134 (a) When an elector casts more votes for any office or
135 measure than he or she is entitled to cast at an election, all the
136 elector's votes for that office or measure are invalid and the
137 elector is deemed to have voted for none of them except as



138 provided in paragraphs (b) and (c) of this subsection. If an
139 elector casts less votes for any office or measure than he or she
140 is entitled to cast at an election, all votes cast by the elector
141 shall be counted but no vote shall be counted more than once.

142 (b) If an elector casts more than one (1) vote for the
143 same candidate for the same office, the first vote is valid and
144 the remaining votes are invalid.

145 (c) If a voter writes the name of a candidate whose
146 name is printed on the ballot in the space provided for write-in
147 candidates for an office, the vote is counted for the person
148 written in for the office indicated, regardless of whether the
149 voter places a mark by the same or any other name for the same
150 office, or omits placing a mark adjacent to the name written in.
151 If a voter is permitted to vote for more than one (1) candidate
152 for the same office in an election and casts one or more write-in
153 votes which, when added to the votes cast for candidates whose
154 names appear on the ballot, exceed the number of votes authorized
155 to be cast for the office, the write-in votes shall be counted and
156 the votes for candidates whose names appear on the ballot may not
157 be counted.

158 (d) No write-in vote for a candidate whose name is
159 printed on the ballot shall be regarded as defective due to
160 misspelling a candidate's name, or by abbreviation, addition or
161 omission or use of a wrong initial in the name, as long as the
162 intent of the voter can be ascertained.

163 (e) In any case where a voter writes in the name of a
164 candidate for President of the United States whose name is printed
165 on the general election ballot, the failure by the voter to write
166 in the name of a candidate for the Office of Vice President of the
167 United States on the general election ballot does not invalidate
168 the elector's vote for the slate of electors for any candidate
169 whose name is written in for the Office of President of the United
170 States.



171 (f) For any ballot measure in which the words "for" or
172 "against" are printed on a ballot, if the voter shall write the
173 word "for" or the word "against" instead of or in addition to
174 marking the ballot in accordance with the ballot instruction in
175 the space adjacent to the preprinted words "for" or "against," the
176 resolution board shall, in reviewing such ballot, count the vote
177 in accordance with the voter's handwritten preference, unless the
178 voter marks the ballot in the space adjacent to the preprinted
179 words "for" or "against" contrary to the handwritten preference,
180 in which case no vote shall be recorded for such ballot in regard
181 to the ballot measure.

182 (g) For any ballot measure in which the words "yes" or
183 "no" are printed on a ballot, if the voter shall write the word
184 "yes" or the word "no" instead of or in addition to marking the
185 ballot in accordance with the ballot instructions in the space
186 adjacent to the preprinted words "yes" or "no," the resolution
187 board shall, in reviewing such ballot, count the vote in
188 accordance with the voter's handwritten preference, unless the
189 voter marks the ballot in the space adjacent to the preprinted
190 words "yes" or "no" contrary to the handwritten preference, in
191 which case no vote shall be recorded for such ballot in regard to
192 the ballot measure.

193 (8) OMR tabulating equipment shall be programmed,
194 calibrated, adjusted and set up to reject ballot cards that appear
195 to be damaged or defective. Any switch, lever or feature on OMR
196 tabulating equipment that enables or permits the OMR tabulating
197 equipment to override the rejection of damaged or defective ballot
198 cards so that such cards will not be reviewed by the resolution
199 board, shall not be utilized.

200 (9) Ballots shall be manually counted by the resolution
201 board only when the ballots are:

202 (a) Properly before the resolution board due to being
203 rejected by the OMR tabulating equipment because the ballots



204 appear to be damaged or defective or are rejected by the OMR
205 equipment for any other reason;

206 (b) Properly before the resolution board due to a
207 malfunction in the OMR tabulating equipment;

208 (c) Properly before a court of competent jurisdiction
209 subsequent to the filing of an election contest;

210 (d) Properly before the Legislature subsequent to the
211 filing of an election contest; or

212 (e) Properly before a party executive committee
213 subsequent to a contest of a primary election.

214 **SECTION 2.** Section 23-15-461, Mississippi Code of 1972, is
215 amended as follows:

216 23-15-461. As used in this chapter, unless otherwise
217 specified:

218 (a) "Automatic tabulating equipment" includes apparatus
219 necessary to automatically examine and count votes as designated
220 on ballots or ballot cards and tabulate the results.

221 (b) "Ballot card" means a tabulating card on which
222 votes may be recorded by means of punching or marking.

223 (c) "Ballot labels" means the cards, papers, booklet,
224 pages or other material, containing the names of offices and
225 candidates and the statements of measures to be voted on, which
226 are placed on the voting device.

227 (d) "Ballot" means a paper ballot on which votes are
228 recorded, or alternatively may mean ballot cards and ballot
229 labels.

230 (e) "Chad" means the part of a ballot card that is
231 designed to be punched out by the voter.

232 (f) "Counting center" means one or more locations used
233 for the automatic counting of ballots.

234 (g) "Electronic voting system" means a system in which
235 votes are recorded on a paper ballot or ballot cards by means of
236 marking or punching, and such votes are subsequently counted and



237 tabulated by automatic tabulating equipment at one or more
238 counting centers.

239 (h) "Voting device" means an apparatus which the voter
240 uses to record his votes by marking or punching a hole in a paper
241 ballot or tabulating card, which votes are subsequently counted by
242 electronic tabulating equipment.

243 **SECTION 3.** Section 23-15-483, Mississippi Code of 1972, is
244 amended as follows:

245 23-15-483. (1) All proceedings at the counting center shall
246 be under the direction of the commissioners of elections or
247 officials in charge of the election, and shall be conducted under
248 the observation of the public, but no persons except those
249 authorized for the purpose shall touch any ballot or ballot card
250 or return. All persons who are engaged in processing and counting
251 of the ballots shall be deputized in writing and take an oath that
252 they will faithfully perform their assigned duties. Persons
253 assigned to operate the automatic tabulating equipment shall
254 submit evidence satisfactory to the commissioners of elections or
255 officials in charge of the elections of their * * * qualifications
256 to operate said equipment.

257 (2) The commissioners of elections or the officials in
258 charge of the election shall appoint qualified electors of the
259 county to serve as judges on a resolution board to review all
260 ballots that have been rejected by the electronic voting system
261 tabulating equipment and are damaged or defective. At general
262 elections, members of the resolution board shall not be of the
263 same political party registered with the Office of the Secretary
264 of State in accordance with Section 23-15-1059 if suitable persons
265 of different political parties or members of the public who have
266 no political affiliation can be found. An odd number of members
267 shall be appointed to the resolution board.

268 (3) (a) If any ballot is damaged or defective so that it
269 cannot be properly counted by the automatic tabulating equipment,



270 the ballot shall be deposited in an envelope provided for that
271 purpose marked "RESOLUTION BOARD." All such ballots shall be
272 carefully handled so as to avoid disturbing any chad or mark on
273 the ballot.

274 (b) The commissioners of election or officials in
275 charge of the election shall direct the judges or the resolution
276 board manually count any damaged or defective ballots, who shall
277 determine the intent of the voter and record the vote consistent
278 with this determination * * *.

279 (c) As an alternative to the procedure provided for in
280 paragraph (b) of this subsection, the resolution board may be
281 instructed by the officials in charge of the election to prepare a
282 duplicate to the damaged or defective ballot in the following
283 manner:

284 (i) The resolution board shall prepare a duplicate
285 to the original damaged or defective ballot marked identically to
286 the original.

287 (ii) The resolution board shall mark the first
288 original they examine as "Original #1" and the duplicate of this
289 original as "Duplicate #1." Subsequent originals and duplicates
290 shall be likewise marked and numbered consecutively so the
291 duplicate of each original can be identified. Duplicate ballots
292 may be printed in a different color from the original ballots so
293 that they may be easily distinguished for the originals.

294 (iii) The duplicate ballots prepared pursuant to
295 this paragraph shall be counted by the electronic tabulating
296 equipment.

297 (4) If the resolution board is directed to manually count
298 damaged or defective ballots, the board shall examine each damaged
299 or defective ballot and determine the intent of the voter. A vote
300 on a ballot in which a hole is punched by the voter to indicate a
301 vote shall not be counted unless:

302 (a) At least two (2) corners of the chad are detached;



303 (b) Light is visible through the hole;
304 (c) An indentation on the chad from the stylus or other
305 object is clearly present and indicates a clearly ascertainable
306 intent of the voter to vote; or
307 (d) The chad reflects by other means a clearly
308 ascertainable intent of the voter to vote based on the totality of
309 the ballot.

310 (3) All ballots that are rejected by the automatic
311 tabulating equipment and which contain overvotes shall be
312 inspected by the resolution board. In cases in which a ballot
313 appearing to contain overvotes is reviewed by the resolution
314 board, the board shall apply the following standards in
315 determining the intent of the voter:

316 (a) When an elector casts more votes for any office or
317 measure than the voter is entitled to cast, all the elector's
318 votes for that office or measure are invalid and the voter shall
319 be deemed to have voted for none of them.

320 (b) In an election for President of the United States,
321 if the voter votes for both the candidates for President and Vice
322 President of the United States from the same party ticket or
323 independent candidate choices, if such option is available to the
324 voter due to the design of the electronic voting system ballot,
325 then the vote is counted as a single vote for the joint candidates
326 for President and Vice President.

327 (4) Subsections (2) and (3) of this section shall not
328 supercede any clearly ascertainable intent of the voter.

329 (5) If for any reason it becomes impractical to count all or
330 a part of the ballots with the automatic tabulating equipment, the
331 officials in charge of the election may direct that the ballots be
332 counted manually and voter intent shall be determined by following
333 the provisions of subsections (2), (3) and (4) of this section in
334 cases of overvoted ballots or those appearing to be blank.



335 (6) The return printed by the automatic tabulating
336 equipment, to which have been added the * * * ballots that have
337 been manually counted and which has been duly certified by the
338 officials in charge of the election, shall constitute the official
339 return of each voting precinct or supervisors district.
340 Unofficial and incomplete returns may be released during the
341 count. Upon completion of the count, the official returns shall
342 be open to the public. * * *

343 (7) Automatic tabulating equipment shall be programmed,
344 calibrated, adjusted and set up to reject ballot cards that appear
345 to be damaged or defective. Any switch, lever or feature on
346 automatic tabulating equipment that enables or permits the
347 automatic tabulating equipment to override the rejection of
348 damaged or defective ballot cards so that such cards will not be
349 reviewed by the resolution board shall not be utilized.

350 (8) Ballots shall be manually counted by the resolution
351 board only when the ballots are:

352 (a) Properly before the resolution board due to being
353 rejected by the automatic tabulating equipment because the ballots
354 appear to be damaged or defective or are rejected by the automatic
355 tabulating equipment for any other reason;

356 (b) Properly before the resolution board due to a
357 malfunction in the automatic tabulating equipment;

358 (c) Properly before a court of competent jurisdiction
359 subsequent to the filing of an election contest;

360 (d) Properly before the Legislature subsequent to the
361 filing of an election contest; or

362 (e) Properly before a party executive committee
363 subsequent to a contest of a primary election.

364 **SECTION 4.** The Attorney General of the State of Mississippi
365 shall submit this act, immediately upon approval by the Governor,
366 or upon approval by the Legislature subsequent to a veto, to the
367 Attorney General of the United States or to the United States



368 District Court for the District of Columbia in accordance with the
369 provisions of the Voting Rights Act of 1965, as amended and
370 extended.

371 **SECTION 5.** This act shall take effect and be in force from
372 and after the date it is effectuated under Section 5 of the Voting
373 Rights Act of 1965, as amended and extended.

