

By: Senator(s) Bryan

To: Elections

SENATE BILL NO. 2377

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



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

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

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

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

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

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



71 may be printed in a different color from the original ballots so  
72 that they may be easily distinguished for the originals.

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

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

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

101 (6) When the resolution board reviews any OMR ballot in  
102 which the voter has failed to fill in the arrow, oval, circle or  
103 square for a candidate or a ballot measure in accordance with the



104 ballot instruction, the resolution board shall, if the intent of  
105 the voter can be ascertained, count the vote if:

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

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

114 (c) The voter marks the ballot with a "cross" (x) or  
115 "checkmark" (✓) and the lines that form the mark intersect  
116 adjacent to the ballot measure or the name of the candidate.

117 (d) The voter underlines the ballot measure or the name  
118 of a candidate.

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

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

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

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

132 (a) When an elector casts more votes for any office or  
133 measure than he or she is entitled to cast at an election, all the  
134 elector's votes for that office or measure are invalid and the  
135 elector is deemed to have voted for none of them except as  
136 provided in paragraphs (b) and (c) of this subsection. If an



137 elector casts less votes for any office or measure than he or she  
138 is entitled to cast at an election, all votes cast by the elector  
139 shall be counted but no vote shall be counted more than once.

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

214 23-15-461. As used in this chapter, unless otherwise  
215 specified:

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

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

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

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

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

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

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



235 tabulated by automatic tabulating equipment at one or more  
236 counting centers.

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

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

243 23-15-483. (1) All proceedings at the counting center shall  
244 be under the direction of the commissioners of elections or  
245 officials in charge of the election, and shall be conducted under  
246 the observation of the public, but no persons except those  
247 authorized for the purpose shall touch any ballot or ballot card  
248 or return. All persons who are engaged in processing and counting  
249 of the ballots shall be deputized in writing and take an oath that  
250 they will faithfully perform their assigned duties. Persons  
251 assigned to operate the automatic tabulating equipment shall  
252 submit evidence satisfactory to the commissioners of elections or  
253 officials in charge of the elections of their \* \* \* qualifications  
254 to operate said equipment.

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

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





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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

