To: Apportionment and Elections

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Representative Scott (80th)

HOUSE BILL NO. 1296

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

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

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

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

(2) The commissioners of elections or the officials in charge of the election shall appoint qualified electors to serve as judges on the "resolution board." At least one (1) member of
the resolution board shall be a circuit court judge. At general
elections, members of the resolution board shall not be of the
same political party registered with the Office of the Secretary
of State in accordance with Section 23-15-1059 if suitable persons
of different political parties or members of the public who have
no political affiliation can be found. An odd number of members
shall be appointed to the resolution board. All ballots that have
been rejected by the OMR tabulating equipment and that are damaged
or defective, blank or overvoted will be reviewed by said board.

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

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

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

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

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

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

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

(5) All ballots that are rejected by the OMR tabulating equipment and which contain overvotes shall be inspected by the resolution board. Regarding those ballots upon which an overvote appears and voter intent cannot be determined by inspection of the resolution board, the officials in charge of the election may use the OMR tabulating equipment in determining the vote in the races which are unaffected by the overvote. All other ballots which are overvoted shall be counted manually following the provisions of this section at the direction of the officials in charge of the election. If for any reason it becomes impracticable to count all or a part of the ballots with the OMR tabulating equipment, the officials in charge may direct that they be counted manually, and voter intent shall be determined by following the provisions of this section. The return printed by the OMR tabulating equipment to which have been added the manually tallied ballots, which shall be duly certified by the officials in charge of the election, shall constitute the official return of each voting precinct.

Unofficial and incomplete returns may be released during the count. Upon the completion of the counting, the official returns shall be open to the public.

(6) When the resolution board reviews any OMR ballot in which the voter has failed to fill in the arrow, oval, circle or square for a candidate or a ballot measure in accordance with the
ballot instruction, the resolution board shall, if the intent of
the voter can be ascertained, count the vote if:

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

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

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

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

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

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

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

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

(a) When an elector casts more votes for any office or
measure than he or she is entitled to cast at an election, all the
elector's votes for that office or measure are invalid and the
elector is deemed to have voted for none of them except as
provided in paragraph (b) of this subsection. If an elector casts
less votes for any office or measure than he or she is entitled to
cast at an election, all votes cast by the elector shall be
counted but no vote shall be counted more than once.

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

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

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

(e) In any case where a voter writes in the name of a
candidate for President of the United States whose name is printed
on the general election ballot, the failure by the voter to write
in the name of a candidate for the Office of Vice President of the
United States on the general election ballot does not invalidate
the elector's vote for the slate of electors for any candidate
whose name is written in for the Office of President of the United
States.
(f) For any ballot measure in which the words "for" or "against" are printed on a ballot, if the voter shall write the word "for" or the word "against" instead of or in addition to marking the ballot in accordance with the ballot instruction in the space adjacent to the preprinted words "for" or "against," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "for" or "against" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

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

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

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

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

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

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

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

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

(10) The resolution board shall make and keep a record regarding the handling and counting of all ballots inspected under this section.

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

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

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

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

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

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

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

(f) "Counting center" means one or more locations used for the automatic counting of ballots.
(g) "Electronic voting system" means a system in which votes are recorded on a paper ballot or ballot cards by means of marking or punching, and such votes are subsequently counted and tabulated by automatic tabulating equipment at one or more counting centers.

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

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

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

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

(3) (a) If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the ballot shall be deposited in an envelope provided for that purpose marked "RESOLUTION BOARD." All such ballots shall be carefully handled so as to avoid disturbing any chad or mark on the ballot.

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

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

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

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

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

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

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

(b) Light is visible through the hole;

(c) An indentation on the chad from the stylus or other object is clearly present and indicates a clearly ascertainable intent of the voter to vote; or

(d) The chad reflects by other means a clearly ascertainable intent of the voter to vote based on the totality of the ballot.

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

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

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

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

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

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

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

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

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

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

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

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

(e) Properly before a party executive committee
subsequent to a contest of a primary election.
(11) The resolution board shall make and keep a record regarding the handling and counting of all ballots inspected under this section.

SECTION 4. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

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