

By: Representative Scott (80th)

To: Apportionment and
Elections

HOUSE BILL NO. 1296

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 serve
 38 as judges on the "resolution board." At least one (1) member of



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

218 23-15-461. As used in this chapter, unless otherwise
219 specified:

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

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

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

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

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

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



236 (g) "Electronic voting system" means a system in which
237 votes are recorded on a paper ballot or ballot cards by means of
238 marking or punching, and such votes are subsequently counted and
239 tabulated by automatic tabulating equipment at one or more
240 counting centers.

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

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

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

259 (2) The commissioners of elections or the officials in
260 charge of the election shall appoint qualified electors of the
261 county to serve as judges on a resolution board to review all
262 ballots that have been rejected by the electronic voting system
263 tabulating equipment and are damaged or defective. At general
264 elections, members of the resolution board shall not be of the
265 same political party registered with the Office of the Secretary
266 of State in accordance with Section 23-15-1059 if suitable persons
267 of different political parties or members of the public who have



268 no political affiliation can be found. An odd number of members
269 shall be appointed to the resolution board.

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

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

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

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

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

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

299 (4) If the resolution board is directed to manually count
300 damaged or defective ballots, the board shall examine each damaged



301 or defective ballot and determine the intent of the voter. A vote
302 on a ballot in which a hole is punched by the voter to indicate a
303 vote shall not be counted unless:

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

305 (b) Light is visible through the hole;

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

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

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

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

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

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

331 (7) If for any reason it becomes impractical to count all or
332 a part of the ballots with the automatic tabulating equipment, the
333 officials in charge of the election may direct that the ballots be



334 counted manually and voter intent shall be determined by following
335 the provisions of subsections (2), (3) and (4) of this section in
336 cases of overvoted ballots or those appearing to be blank.

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

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

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

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

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

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

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

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



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

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

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

