

By: Senator(s) Chamberlin, Jackson (11th)

To: Elections

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2860

1 AN ACT TO AUTHORIZE THE USE OF DIRECT RECORDING ELECTRONIC
2 VOTING EQUIPMENT (DRE) TO CAST BALLOTS AND RECORD VOTES AT
3 ELECTIONS IN THIS STATE; TO SPECIFY THE MINIMUM REQUIREMENTS THAT
4 SUCH SYSTEMS MUST MEET TO BE USED IN ELECTIONS IN THIS STATE; TO
5 PROVIDE THE MANNER IN WHICH DRE'S MUST BE ARRANGED AT THE POLLING
6 PLACE; TO PROVIDE FOR THE FORM OF THE DRE BALLOT; TO PROVIDE THE
7 DUTIES OF THE OFFICIALS IN CHARGE OF THE ELECTION IN REGARD TO THE
8 USE OF DRE'S; TO PROVIDE THAT THE CIRCUIT CLERK SHALL BE THE
9 CUSTODIAN OF DRE UNITS; TO PROVIDE FOR THE TESTING OF DRE UNITS
10 PRIOR TO THE ELECTION; TO PROVIDE FOR THE ARRANGEMENT OF OFFICES,
11 NAMES OF CANDIDATES AND QUESTIONS ON DRE BALLOTS; TO PROVIDE FOR A
12 WRITE-IN BALLOT FOR USE IN ELECTIONS CONDUCTED WITH DRE'S; TO
13 REQUIRE DEMONSTRATIONS OF THE USE OF DRE'S; TO PROVIDE FOR THE
14 STORAGE OF DRE UNITS WHEN THEY ARE NOT IN USE; TO PROVIDE THE
15 MANNER IN WHICH AN ELECTOR VOTES ON A DRE UNIT; TO PROVIDE FOR THE
16 VOIDING OF BALLOTS IN CERTAIN INSTANCES WHEN THE ELECTOR DOES NOT
17 COMPLETE THE VOTING PROCESS; TO PROVIDE THE MANNER IN WHICH VOTES
18 ARE COUNTED AND THE RESULTS DETERMINED IN ELECTIONS CONDUCTED WITH
19 DRE'S; TO PROVIDE FOR THE MANNER IN WHICH CHALLENGED BALLOTS ARE
20 HANDLED IN ELECTIONS CONDUCTED WITH DRE'S; TO MAKE IT A FELONY TO
21 TAMPER WITH OR DAMAGE A DRE UNIT OR TABULATING COMPUTER OR DEVICE
22 BEING USED IN CONNECTION WITH ANY ELECTION OR TO PREVENT THE
23 CORRECT OPERATION OF ANY DRE; TO PROVIDE FOR THE USE OF IRREGULAR
24 PAPER BALLOTS IF DRE UNITS BECOME INOPERABLE AT AN ELECTION; TO
25 AMEND SECTION 23-15-391, MISSISSIPPI CODE OF 1972, IN CONFORMITY
26 THERETO; AND FOR RELATED PURPOSES.

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

28 **SECTION 1.** As used in this act:

29 (a) "DRE" means direct recording electronic voting
30 equipment.

31 (b) "Direct recording electronic voting equipment"
32 means a computer driven unit for casting and counting votes on
33 which an elector touches a video screen or a button adjacent to a
34 video screen to cast his or her vote.

35 **SECTION 2.** Each DRE unit shall:

36 (a) Permit the voter to verify, in a private and
37 independent manner, the votes selected by the voter on the ballot
38 before the ballot is cast and counted;

39 (b) Provide the voter with the opportunity, in a
40 private and independent manner, to change the ballot or correct
41 any error before the ballot is cast and counted, including, but
42 not limited to, the opportunity to correct the error through the
43 issuance of a replacement ballot if the voter is otherwise unable
44 to change the ballot or correct any error;

45 (c) If the voter selects votes for more candidates for
46 a single office than are eligible for election:

47 (i) Notify the voter that he has selected more
48 candidates for that office than are eligible for election;

49 (ii) Notify the voter before his vote is cast and
50 counted of the effect of casting multiple votes for such an
51 office; and

52 (iii) Provide the voter with the opportunity to
53 correct the ballot before the ballot is cast and counted.

54 (d) Produce a permanent paper record with a manual
55 audit capacity which shall be available for any recount conducted
56 with respect to the election in which the DRE unit is used;

57 (e) Have the capability to print the ballots cast by
58 electors to be utilized in the event of a recount conducted with
59 respect to the election in which the DRE is used;

60 (f) Be accessible for individuals with disabilities,
61 including, but not limited to, nonvisual accessibility for the
62 blind and visually impaired, in a manner that provides the same
63 opportunity for access and participation, including privacy and
64 independence, as for other voters. This requirement may be
65 satisfied through the use of at least one (1) DRE unit or other
66 voting unit equipped for individuals with disabilities at each
67 polling place;

68 (g) Provide alternative language accessibility pursuant
69 to the requirements of the Voting Rights Act of 1965; and

70 (h) Have a residual vote rate in counting ballots
71 attributable to the voting system and not to voter error that

72 complies with error rate standards established under the voting
73 system standards issued by the Federal Election Commission which
74 were in effect as of October 29, 2002.

75 **SECTION 3.** DRE's shall be arranged in the polling place in
76 such a manner as to:

77 (a) Ensure the privacy of the elector while voting on
78 such units;

79 (b) Allow monitoring of the units by the poll managers
80 while the polls are open; and

81 (c) Permit the public and lawful poll watchers to
82 observe the voting without affecting the privacy of the electors
83 as they vote.

84 **SECTION 4.** (1) The ballots for DRE's shall be of such size
85 and arrangement as will suit the construction of the DRE screen
86 and shall be in plain, clear type that is easily readable by
87 persons with normal vision.

88 (2) (a) If the equipment has the capacity for color
89 display, the names of all candidates in a particular race shall be
90 displayed in the same color, font and size, and the political
91 party or affiliation of candidates may be displayed in a color
92 different from that used to display the names of the candidates,
93 but all political party or affiliations shall be displayed in the
94 same color. All political party names shall be displayed in the
95 same size and font.

96 (b) All ballot questions and constitutional amendments
97 shall be displayed in the same color.

98 **SECTION 5.** (1) The officials in charge of the election of
99 each county or municipality shall:

100 (a) Cause the proper ballot design and style to be
101 programmed for each DRE unit which is to be used in any precinct
102 within the county or municipality;

103 (b) Cause each DRE unit to be placed in proper order
104 for voting;

105 (c) Examine each unit before it is sent to a polling
106 place;

107 (d) Verify that each registering mechanism is set at
108 zero; and

109 (e) Properly secure each unit so that the counting
110 machinery cannot be operated until later authorized.

111 (2) The circuit clerk shall be the custodian of the DRE units
112 acquired by the county.

113 (3) The officials in charge of the election shall be
114 responsible for the preparation of the units to be used in the
115 county or municipality at the primaries and other elections in the
116 county or municipality.

117 (4) (a) On or before the third day preceding any election,
118 except runoff elections, the officials in charge of the election
119 shall have each DRE unit tested to ascertain that it will
120 correctly count the votes cast for all offices and on all
121 questions in a manner that the Secretary of State may prescribe by
122 rule or regulation.

123 (b) On or before the third day preceding any runoff
124 election, the officials in charge of the election shall test a
125 number of DRE units at random to ascertain that the units will
126 correctly count the votes cast for all offices. If the total
127 number of DRE units in the county is thirty (30) units or less,
128 all of the units shall be tested. If the total number of DRE
129 units in the county is more than thirty (30) but not more than one
130 hundred (100), then at least one-half (1/2) of the units shall be
131 tested at random. If there are more than one hundred (100) DRE
132 units in the county, the officials in charge of the election shall
133 test at least fifteen percent (15%) of the units at random. In no
134 event shall the officials in charge of the election test less than
135 one (1) DRE unit per precinct. All memory cards to be used in the
136 runoff shall be tested. Public notice of the time and place of
137 the test shall be made at least five (5) days prior thereto.

138 Representatives of candidates, political parties, news media and
139 the public shall be permitted to observe such tests.

140 (5) In every primary or general election, the officials in
141 charge of the election shall furnish, at the expense of the county
142 or municipality, all ballots, forms of certificates and other
143 papers and supplies required under this act which are not
144 furnished by the Secretary of State, all of which shall be in the
145 form and according to any specifications prescribed from time to
146 time by the Secretary of State.

147 **SECTION 6.** (1) The arrangement of offices, names of
148 candidates and questions upon the DRE ballots shall conform as
149 nearly as practicable to the arrangement of offices, names of
150 candidates and questions on paper ballots.

151 (2) A separate write-in ballot, which may be in the form of
152 a paper ballot, card or envelope in which the voter places his
153 ballot card after voting, shall be provided if required to permit
154 voters to write in the title of the office and the name of the a
155 person not on the printed ballot for whom he wishes to vote. The
156 design of the write-in ballot shall permit the officials in charge
157 of the election and poll workers when obtaining the vote count
158 from such systems to determine readily whether an elector has cast
159 any write-in vote not authorized by law.

160 **SECTION 7.** (1) The officials in charge of the election
161 shall ensure the delivery of the proper DRE units to the polling
162 places of the respective precincts at least one (1) hour before
163 the time for opening the polls at each election and shall cause
164 each unit to be set up in the proper manner for use in voting.

165 (2) The officials in charge of the election shall require
166 that each DRE unit be thoroughly tested, inspected and sealed
167 prior to the delivery of each DRE unit to the polling place.
168 Prior to opening the polls each day on which the units will be
169 used in an election, the manager shall break the seal on each
170 unit, turn on each unit, certify that each unit is operating

171 properly and is set to zero, and print a zero tape certifying that
172 each unit is set to zero and shall keep or record such
173 certification on each unit.

174 (3) The officials in charge of the election and poll
175 managers shall provide ample protection against molestation of and
176 injury to the DRE units, and, for that purpose, the officials in
177 charge of the election and poll managers may call upon any law
178 enforcement officer to furnish any assistance that may be
179 necessary. It shall be the duty of any law enforcement officer to
180 furnish assistance when so requested by the officials in charge of
181 the election or poll manager.

182 (4) The officials in charge of the election, in conjunction
183 with the governing authorities, shall, at least one (1) hour prior
184 to the opening of the polls:

185 (a) Provide sufficient lighting to enable electors to
186 read the ballot and which shall be suitable for the use of the
187 poll managers in examining the booth and conducting their
188 responsibilities;

189 (b) Provide directions for voting on the DRE units
190 which shall be prominently posted within each voting booth and at
191 least two (2) sample ballots for the primary or general election
192 which shall be prominently posted outside the enclosed space
193 within the polling place;

194 (c) Ensure that each DRE unit's tabulating mechanism is
195 secure throughout the day during the primary or general election;
196 and

197 (d) Provide such other materials and supplies as may be
198 necessary or required by law.

199 **SECTION 8.** The officials in charge of the election shall
200 place on public exhibition and demonstrate the use of the DRE
201 units throughout the county or municipality during the month
202 preceding each primary and general election. At least during the
203 initial year in which DRE equipment is used in a county or

204 municipality, all officials in charge of the election shall offer
205 a series of demonstrations and organized voter education
206 initiatives to educate electors in the use of such equipment in
207 voting.

208 SECTION 9. (1) All DRE units and related equipment shall be
209 properly stored and secured when not in use.

210 (2) The circuit clerk shall store the DRE units and related
211 equipment under his or her supervision when it is not in use at an
212 election. The circuit clerk shall provide compensation for the
213 safe storage and care of such units and related equipment if the
214 units and related equipment are stored by a person or entity other
215 than the circuit clerk.

216 SECTION 10. (1) A duly qualified elector shall cast his
217 vote on a DRE unit by touching the screen or pressing the
218 appropriate button on the unit for the candidate or issue of the
219 elector's choice. After pressing the appropriate button on the
220 unit or location on the screen to cast the ballot, the elector's
221 vote shall be final and shall not be subsequently altered.

222 (2) If an elector leaves the voting booth without having
223 pressed the appropriate button on the unit or location on the
224 screen to finally cast his or her ballot and cannot be located to
225 return to the booth to complete the voting process, then a poll
226 manager shall take the steps necessary to void the ballot that was
227 not completed by the elector and an appropriate record shall be
228 made of the event.

229 SECTION 11. (1) In elections in which DRE voting equipment
230 is used, the ballots shall be counted at the precinct under the
231 direction of the officials in charge of the election. All persons
232 who perform any duties at the precinct shall be deputized by the
233 officials in charge of the election and only persons so deputized
234 shall touch any ballot, container, paper or machine utilized in
235 the conduct of the count or be permitted to be in the immediate
236 area designed for officers deputized to conduct the count.

237 (2) All proceedings at the precincts shall be open to the
238 view of the public, but no person except one employed and
239 designated for the purpose by the officials in charge of the
240 election shall touch any ballot, any DRE unit or the tabulating
241 equipment.

242 (3) After the polls have closed and all voting in the
243 precinct has ceased, the poll manager shall shut down the DRE
244 units and extract the election results from each unit as follows:

245 (a) The manager shall obtain the results tape from each
246 DRE unit and verify that the number of ballots cast as recorded on
247 the tape matches the public count number as displayed on the DRE
248 unit;

249 (b) If a system is established by the Secretary of
250 State, the poll manager shall first transmit the election results
251 extracted from each DRE unit in each precinct via modem to the
252 central tabulating center of the county; and

253 (c) The manager shall then extract the memory card, if
254 applicable, from each DRE unit.

255 (4) (a) Upon completion of shutting down each DRE unit and
256 extracting the election results, the manager shall cause to be
257 completed and signed a ballot recap form, in sufficient
258 counterparts, showing:

259 (i) The number of valid ballots;

260 (ii) The number of spoiled and invalid ballots;

261 (iii) The number of affidavit ballots; and

262 (iv) The number of unused affidavit ballots and
263 any other unused ballots.

264 (b) The manager shall cause to be placed in the ballot
265 supply container one (1) copy of the recap form and any unused,
266 defective, spoiled and invalid ballots, each enclosed in an
267 envelope or communication pack.

268 (5) The manager shall collect and retain the zero tape and
269 the results tape for each DRE unit and place the tapes with the

270 memory card, if any, for each unit and enclose all such items for
271 all of the DRE units used in the precinct in one (1) envelope or
272 communication pack which shall be sealed and initialed by the
273 manager so that it cannot be opened without breaking the seal.

274 (6) The returning manager shall then deliver the envelope or
275 communication pack to the tabulating center for the county or
276 municipality or to such other place designated by the officials in
277 charge of the election and shall receive a receipt therefor. The
278 copies of the recap forms, unused ballots, records and other
279 materials shall be returned to the designated location and
280 retained as provided by law.

281 (7) Upon receipt of the sealed envelope or communication
282 pack containing the zero tapes, results tapes and memory cards,
283 the officials in charge of the election shall verify the
284 signatures on the envelope or communication pack. Once verified,
285 the officials in charge of the election shall break the seal of
286 the envelope or communication pack and remove its contents. The
287 officials in charge of the election shall then download the
288 results stored on the memory card from each DRE unit into the
289 election management system located at the central tabulation point
290 of the county in order to obtain election results for
291 certification.

292 **SECTION 12.** In the case of challenged ballots cast on direct
293 recording electronic voting equipment, the ballots shall be coded
294 in such a way that the ballot of a challenged voter can be
295 separated from other valid ballots at the time of tabulation and
296 the challenged ballots shall be counted, challenged or rejected in
297 accordance with the challenged ballot law.

298 **SECTION 13.** If for any reason any direct recording
299 electronic voting equipment shall become inoperable, the poll
300 managers, or the officials in charge of the election, shall direct
301 voters to go to an operating terminal or to cast irregular
302 ballots, if necessary, which shall be paper ballots. Such paper

303 ballots shall be administered, as far as is practicable, in
304 accordance with the laws concerning paper ballots.

305 **SECTION 14.** Any person who willfully tampers with or damages
306 any DRE unit or tabulating computer or device to be used or being
307 used at or in connection with any primary or election or who
308 prevents or attempts to prevent the correct operation of any DRE
309 unit or tabulating computer or device shall be guilty of a felony
310 and, upon conviction, be punished by imprisonment for not less
311 than three (3) years nor more than ten (10) years.

312 **SECTION 15.** Section 23-15-391, Mississippi Code of 1972, is
313 amended as follows:

314 23-15-391. The board of supervisors of each county in the
315 State of Mississippi shall * * * utilize voting machines,
316 electronic voting systems, * * * optical mark reading equipment or
317 direct recording electronic voting equipment which shall comply
318 with the specifications provided by law. * * * The election
319 commissioners may designate * * * elections to be administered by
320 paper ballot where the election commissioners * * * determine that
321 administration of an election by paper ballot will be less
322 expensive than administration of the same election by voting
323 machines, electronic voting systems, * * * optical mark reading
324 equipment or direct recording electronic voting equipment.

325 **SECTION 16.** The Attorney General of the State of Mississippi
326 shall submit this act, immediately upon approval by the Governor,
327 or upon approval by the Legislature subsequent to a veto, to the
328 Attorney General of the United States or to the United States
329 District Court for the District of Columbia in accordance with the
330 provisions of the Voting Rights Act of 1965, as amended and
331 extended.

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