

By: Senator(s) Chamberlin

To: Elections

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

65           (f) Provide alternative language accessibility pursuant  
66 to the requirements of the Voting Rights Act of 1965; and

67           (g) Have a residual vote rate in counting ballots  
68 attributable to the voting system and not to voter error that  
69 complies with error rate standards established under the voting  
70 system standards issued by the Federal Election Commission which  
71 were in effect as of October 29, 2002.

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

74               (a) Ensure the privacy of the elector while voting on  
75 such units;

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

78               (c) Permit the public and lawful poll watchers to  
79 observe the voting without affecting the privacy of the electors  
80 as they vote.

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

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

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

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

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

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

102              (c) Examine each unit before it is sent to a polling  
103 place;

104           (d) Verify that each registering mechanism is set at  
105 zero; and

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

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

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

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

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

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

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

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

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

(2) The officials in charge of the election shall require that each DRE unit be thoroughly tested, inspected and sealed prior to the delivery of each DRE unit to the polling place. Prior to opening the polls each day on which the units will be used in an election, the manager shall break the seal on each unit, turn on each unit, certify that each unit is operating properly and is set to zero, and print a zero tape certifying that

each unit is set to zero and shall keep or record such certification on each unit.

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

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

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

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

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

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

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

202 a series of demonstrations and organized voter education  
203 initiatives to educate electors in the use of such equipment in  
204 voting.

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

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

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

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

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

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

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

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

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

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

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

256 (i) The number of valid ballots;  
257 (ii) The number of spoiled and invalid ballots;  
258 (iii) The number of affidavit ballots; and  
259 (iv) The number of unused affidavit ballots and  
260 any other unused ballots.

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

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



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

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

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

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

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

300 ballots shall be administered, as far as is practicable, in  
301 accordance with the laws concerning ballots.

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

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

311       23-15-391. The board of supervisors of each county in the  
312 State of Mississippi shall \* \* \* utilize voting machines,  
313 electronic voting systems, \* \* \* optical mark reading equipment or  
314 direct recording electronic voting equipment which shall comply  
315 with the specifications provided by law. \* \* \* The election  
316 commissioners may designate \* \* \* elections to be administered by  
317 paper ballot where the election commissioners \* \* \* determine that  
318 administration of an election by paper ballot will be less  
319 expensive than administration of the same election by voting  
320 machines, electronic voting systems, \* \* \* optical mark reading  
321 equipment or direct recording electronic voting equipment.

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

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