

By: Senator(s) Burton

To: Elections

SENATE BILL NO. 2829
(As Sent to Governor)

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 COMPUTED 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; TO AMEND SECTION 23-15-169.3, MISSISSIPPI CODE OF 1972,
27 TO CLARIFY THE ELIGIBILITY FOR FEDERAL FUNDS ACCEPTED BY THE
28 SECRETARY OF STATE FOR HELP AMERICA VOTE ACT COMPLIANCE EFFORTS OF
29 COUNTIES THAT PURCHASE CERTAIN VOTING SYSTEMS; TO AMEND SECTION
30 18, CHAPTER 305, LAWS OF 2004, TO REMOVE THE DISSOLUTION OF THE
31 TASK FORCE TO STUDY VOTING SYSTEMS; AND FOR RELATED PURPOSES.

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

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

34 (a) "DRE" means direct recording electronic voting
35 equipment.

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

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

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

44 (b) Provide the voter with the opportunity, in a
45 private and independent manner, to change the ballot or correct
46 any error before the ballot is cast and counted, including, but
47 not limited to, the opportunity to correct the error through the
48 issuance of a replacement ballot if the voter is otherwise unable
49 to change the ballot or correct any error;

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

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

54 (ii) Notify the voter before his vote is cast and
55 counted of the effect of casting multiple votes for such an
56 office; and

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

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

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

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

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

75 (h) Have a residual vote rate in counting ballots
76 attributable to the voting system and not to voter error that
77 complies with error rate standards established under the voting
78 system standards issued by the Federal Election Commission which
79 were in effect as of October 29, 2002.

80 **SECTION 3.** DREs shall be arranged in the polling place in
81 such a manner as to:

82 (a) Ensure the privacy of the elector while voting on
83 such units;

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

86 (c) Permit the public and lawful poll watchers to
87 observe the voting without affecting the privacy of the electors
88 as they vote.

89 **SECTION 4.** (1) The ballots for DREs shall be of such size
90 and arrangement as will suit the construction of the DRE screen
91 and shall be in plain, clear type that is easily readable by
92 persons with normal vision.

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

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

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

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

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

110 (c) Examine each unit before it is sent to a polling
111 place;

112 (d) Verify that each registering mechanism is set at
113 zero; and

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

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

118 (3) The officials in charge of the election shall be
119 responsible for the preparation of the units to be used in the
120 county or municipality at the primaries and other elections in the
121 county or municipality.

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

128 (b) On or before the third day preceding any runoff
129 election, the officials in charge of the election shall test a
130 number of DRE units at random to ascertain that the units will
131 correctly count the votes cast for all offices. If the total
132 number of DRE units in the county is thirty (30) units or less,
133 all of the units shall be tested. If the total number of DRE
134 units in the county is more than thirty (30) but not more than one
135 hundred (100), then at least one-half (1/2) of the units shall be
136 tested at random. If there are more than one hundred (100) DRE
137 units in the county, the officials in charge of the election shall

138 test at least fifteen percent (15%) of the units at random. In no
139 event shall the officials in charge of the election test less than
140 one (1) DRE unit per precinct. All memory cards to be used in the
141 runoff shall be tested. Public notice of the time and place of
142 the test shall be made at least five (5) days prior thereto.
143 Representatives of candidates, political parties, news media and
144 the public shall be permitted to observe such tests.

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

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

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

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

170 (2) The officials in charge of the election shall require
171 that each DRE unit be thoroughly tested, inspected and sealed
172 prior to the delivery of each DRE unit to the polling place.
173 Prior to opening the polls each day on which the units will be
174 used in an election, the manager shall break the seal on each
175 unit, turn on each unit, certify that each unit is operating
176 properly and is set to zero, and print a zero tape certifying that
177 each unit is set to zero and shall keep or record such
178 certification on each unit.

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

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

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

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

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

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

204 **SECTION 8.** The officials in charge of the election shall
205 place on public exhibition and demonstrate the use of the DRE
206 units throughout the county or municipality during the month
207 preceding each primary and general election. At least during the
208 initial year in which DRE equipment is used in a county or
209 municipality, all officials in charge of the election shall offer
210 a series of demonstrations and organized voter education
211 initiatives to educate electors in the use of such equipment in
212 voting.

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

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

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

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

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

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

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

250 (a) The manager shall obtain the results tape from each
251 DRE unit and verify that the number of ballots cast as recorded on
252 the tape matches the public count number as displayed on the DRE
253 unit;

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

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

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

264 (i) The number of valid ballots;

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

266 (iii) The number of affidavit ballots; and

267 (iv) The number of unused affidavit ballots and
268 any other unused ballots.

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

273 (5) The manager shall collect and retain the zero tape and
274 the results tape for each DRE unit and place the tapes with the
275 memory card, if any, for each unit and enclose all such items for
276 all of the DRE units used in the precinct in one (1) envelope or
277 communication pack which shall be sealed and initialed by the
278 manager so that it cannot be opened without breaking the seal.

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

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

297 **SECTION 12.** In the case of challenged ballots cast on direct
298 recording electronic voting equipment, the ballots shall be coded
299 in such a way that the ballot of a challenged voter can be

300 separated from other valid ballots at the time of tabulation and
301 the challenged ballots shall be counted, challenged or rejected in
302 accordance with the challenged ballot law.

303 **SECTION 13.** If for any reason any direct recording
304 electronic voting equipment shall become inoperable, the poll
305 managers, or the officials in charge of the election, shall direct
306 voters to go to an operating terminal or to cast irregular
307 ballots, if necessary, which shall be paper ballots. Such paper
308 ballots shall be administered, as far as is practicable, in
309 accordance with the laws concerning paper ballots.

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

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

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

330 **SECTION 16.** Section 23-15-169.3, Mississippi Code of 1972,
331 is amended as follows:

332 23-15-169.3. (1) The Secretary of State shall have the
333 authority to accept federal funds authorized under the Help
334 America Vote Act of 2002 and to meet all the requirements of the
335 Help America Vote Act of 2002 in order to expend the funds.

336 (2) Counties that purchase or have purchased since January
337 1, 2001, voting systems that comply with the requirements of the
338 Help America Vote Act of 2002 shall be eligible for federal funds
339 accepted by the Secretary of State for Help America Vote Act of
340 2002 compliance efforts. The only restriction that the Secretary
341 of State may place on the expenditure of federal funds for the
342 purchase of voting systems is that the systems comply with the
343 criteria and rules established in the Help America Vote Act of
344 2002 for voting systems.

345 (3) Counties may purchase voting systems under the Help
346 America Vote Act of 2002 (HAVA) if:

347 (a) The system selected is HAVA compliant as determined
348 by the rules promulgated to effectuate the Help America Vote Act
349 of 2002 in this state; and

350 (b) The County Board of Supervisors spreads upon its
351 minutes a certification of the following:

352 (i) The county determined it is in its best
353 interest to opt out of any statewide bulk purchase to be
354 effectuated by the Secretary of State pursuant to his duties under
355 HAVA;

356 (ii) The voting system selected by the county
357 meets all of the foregoing requirements under HAVA ;

358 (iii) The county understands and accepts any and
359 all liability for said system; and

360 (iv) The county is solely responsible for the
361 purchase of said system.

362 Upon meeting the foregoing requirements, a county shall be
363 reimbursed for its costs for said system from the HAVA funds for
364 this purpose; however, the county shall be limited in its

365 reimbursement to an amount to be determined by the Secretary of
366 State based upon an objective formula implemented for the
367 statewide, bulk purchase of said voting systems. Any costs over
368 and above the set formula described herein shall be the sole
369 responsibility of the county.

370 (c) In addition to other information required by
371 paragraph (b) of this subsection, any county that purchases voting
372 systems after the effective date of this act shall spread upon its
373 minutes certification of the following:

374 (i) All voting systems within the county are the
375 same, except those machines that are handicap accessible as
376 required by HAVA; and

377 (ii) The voting systems have a device or mechanism
378 that allows any votes cast to be verified by paper audit trail.

379 **SECTION 17.** (1) In any county having a population greater
380 than two hundred fifty thousand (250,000) according to the 2000
381 federal decennial census, the number of voting machines to be used
382 in each voting precinct must be distributed in direct proportion
383 to voter turnout in all elections held within such county for the
384 preceding two (2) years, with a greater number of voting machines
385 to be used in voting precincts where voter turnout has been the
386 highest.

387 (2) The county board of supervisors of any county
388 having a population greater than two hundred fifty thousand
389 (250,000) according to the 2000 federal decennial census shall
390 create a special fund to deposit any monies received by such
391 county for reimbursement to comply with the "Help America Vote Act
392 of 2002" for direct recording electronic voting equipment
393 purchased within five (5) years preceding the effective date of
394 this act. Monies deposited in such special fund shall be used by
395 such county board of supervisors only to upgrade direct recording
396 electronic voting equipment, to purchase additional voting

397 equipment or to improve such voting equipment. This subsection
398 shall stand repealed on July 1, 2010.

399 **SECTION 18.** Section 18, Chapter 305, Laws of 2004, is
400 amended as follows:

401 (1) There is created a task force to study voting systems
402 that comply with the Help America Vote Act of 2002 and their
403 suitability for use in elections in Mississippi. The task force
404 shall make a report of its findings and recommendations to the
405 Legislature before or by September 15, 2005, including any
406 recommended legislation.

407 (2) The task force shall be composed of the following
408 members:

409 (a) The Secretary of State, or his designee;

410 (b) The Chairman of the Elections Committee of the
411 Senate;

412 (c) The Chairman of the Apportionment and Elections
413 Committee of the House of Representatives;

414 (d) A circuit clerk appointed by the President of the
415 Mississippi Association of Circuit Clerks;

416 (e) A member of the general public who is not an
417 elected official or state employee, appointed by the Governor;

418 (f) A member of the general public who is not an
419 elected official or state employee, appointed by the Lieutenant
420 Governor; and

421 (g) A member of the general public who is not an
422 elected official or state employee, appointed by the Speaker of
423 the House of Representatives.

424 (3) Appointments shall be made within thirty (30) days after
425 the effective date of Section 18, Chapter 305, Laws of 2004, and,
426 within fifteen (15) days thereafter on a day to be designated
427 jointly by the Speaker of the House and the Lieutenant Governor,
428 the task force shall meet and organize by selecting from its
429 membership a chairman and a vice chairman. The vice chairman

430 shall also serve as secretary and shall be responsible for keeping
431 all records of the task force. A majority of the members of the
432 task force shall constitute a quorum. In the selection of its
433 officers and the adoption of rules, resolutions and reports, an
434 affirmative vote of a majority of the task force shall be
435 required. All members shall be notified in writing of all
436 meetings, such notices to be mailed at least fifteen (15) days
437 before the date on which a meeting is to be held.

438 (4) The task force shall study voting systems that comply
439 with the Help America Vote Act of 2002 and make recommendations
440 regarding the types of voting systems that are suitable for use in
441 Mississippi.

442 (5) Members of the task force who are not legislators, state
443 officials or state employees shall be compensated at the per diem
444 rate authorized by Section 25-3-69 and shall be reimbursed in
445 accordance with Section 25-3-41 for mileage and actual expenses
446 incurred in the performance of their duties. Legislative members
447 of the task force shall be paid from the contingent expense funds
448 of their respective houses in the same manner as provided for
449 committee meetings when the Legislature is not in session.
450 However, no per diem or expense for attending meetings of the task
451 force will be paid to legislative members of the task force while
452 the Legislature is in session. No task force member may incur per
453 diem, travel or other expenses unless previously authorized by
454 vote, at a meeting of the task force, which action shall be
455 recorded in the official minutes of the meeting. Nonlegislative
456 members shall be paid from any funds made available to the task
457 force for that purpose.

458 (6) The task force shall use clerical and legal staff
459 already employed by the Legislature and any other staff assistance
460 made available to it. To effectuate the purposes of this section,
461 any department, division, board, bureau, commission or agency of
462 the state or of any political subdivision thereof shall, at the

463 request of the chairman of the task force, provide to the task
464 force such facilities, assistance and data as will enable the task
465 force to properly carry out its task.

466 **SECTION 19.** Section 18, Chapter 305, Laws of 2004, as
467 amended by Section 18 of this act shall be codified in Title 23,
468 Chapter 15 of the Mississippi Code of 1972.

469 **SECTION 20.** The Attorney General of the State of Mississippi
470 shall submit this act, immediately upon approval by the Governor,
471 or upon approval by the Legislature subsequent to a veto, to the
472 Attorney General of the United States or to the United States
473 District Court for the District of Columbia in accordance with the
474 provisions of the Voting Rights Act of 1965, as amended and
475 extended.

476 **SECTION 21.** This act shall take effect and be in force from
477 and after the date it is effectuated under Section 5 of the Voting
478 Rights Act of 1965, as amended and extended.