

By: Representative Staples

To: Apportionment and
Elections

HOUSE BILL NO. 1019

1 AN ACT TO AMEND SECTIONS 23-15-601, 23-15-605, 23-15-607,
2 23-15-611, 23-15-221 AND 23-15-857, MISSISSIPPI CODE OF 1972, TO
3 REVISE THE PROCEDURE USED TO DETERMINE THE RESULTS OF AN ELECTION
4 WHEN TWO CANDIDATES RECEIVE AN EQUAL NUMBER OF VOTES; AND FOR
5 RELATED PURPOSES.

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

7 **SECTION 1.** Section 23-15-601, Mississippi Code of 1972, is
8 amended as follows:

9 23-15-601. (1) When the result of the election shall have
10 been ascertained by the poll managers they, or one (1) of their
11 number, or some fit person designated by them, shall, on the night
12 of the election, deliver to the election commissioners, at the
13 courthouse, a statement of the whole number of votes given for
14 each person and for what office; and the election commissioners
15 shall canvass the returns, ascertain and declare the result, and,
16 within ten (10) days after the day of the election, shall deliver
17 a certificate of the election to the person having the greatest
18 number of votes for representative in the Legislature of districts
19 composed of one (1) county or less, or other county office, board



20 of supervisors, justice court judge and constable. If it appears
21 that two (2) or more candidates for Representative of the county,
22 or part of the county, or for any county office, board of
23 supervisors, justice court judge or constable standing highest on
24 the list, and not elected, have an equal number of votes, * * * a
25 new election shall be held for the office, which shall occur no
26 less than thirty-five (35) days after the date of the election
27 that resulted in the equal votes, and a certificate of election
28 shall be given accordingly. The foregoing provisions shall apply
29 to Senators, if the county be a senatorial district.

30 (2) The election commissioners shall transmit to the
31 Secretary of State, on such forms and by such methods as may be
32 required by rules and regulations promulgated by the Secretary of
33 State, a statement of the total number of votes cast in the county
34 for each candidate for each office and the total number of votes
35 cast for such candidates in each precinct in the district in which
36 the candidate ran.

37 **SECTION 2.** Section 23-15-605, Mississippi Code of 1972, is
38 amended as follows:

39 23-15-605. The Secretary of State, immediately after
40 receiving the returns of an election, not longer than thirty (30)
41 days after the election, shall sum up the whole number of votes
42 given for each candidate other than candidates for state offices,
43 legislative offices composed of one (1) county or less, county
44 offices and county district offices, according to the statements



45 of the votes certified to him or her and ascertain the person or
46 persons having the largest number of votes for each office, and
47 declare such person or persons to be duly elected; and thereupon
48 all persons chosen to any office at the election shall be
49 commissioned by the Governor; but if it appears that two (2) or
50 more candidates for any district office where the district is
51 composed of two (2) or more counties, standing highest on the
52 list, and not elected, have an equal number of votes, the election
53 shall be decided between the candidates having an equal number of
54 votes by * * * a new election for the office, which shall occur no
55 less than thirty-five (35) days after the date of the election
56 that resulted in the equal votes.

57 **SECTION 3.** Section 23-15-607, Mississippi Code of 1972, is
58 amended as follows:

59 23-15-607. (1) The election commissioners shall, within ten
60 (10) days after an election for judges of the Supreme Court or
61 Court of Appeals, transmit to the Secretary of State, to be filed
62 in his or her office, a statement of the whole number of votes
63 given in their county, and the whole number of votes given in each
64 precinct in their county, for each candidate for the Office of
65 Judge of the Supreme Court or Court of Appeals, and the Secretary
66 of State shall immediately notify each member of the State Board
67 of Election Commissioners in writing to assemble at his or her
68 office on a day to be fixed by him or her, to be within ten (10)
69 days after the receipt by him or her of such statement, and when



70 assembled pursuant to such notice the State Board of Election
71 Commissioners shall sum up the whole number of votes given for
72 each candidate for judge of the Supreme Court or Court of Appeals
73 according to the total number of votes in each county for each
74 candidate as certified to the Secretary of State, ascertain the
75 person or persons to be elected; and thereupon all persons chosen
76 to such office at the election shall be commissioned by the
77 Governor; but if it appears that two (2) or more candidates for
78 judge of the Supreme Court or Court of Appeals standing highest on
79 the list, and not elected, have an equal number of votes, the
80 election shall be decided between the candidates having an equal
81 number of votes by * * * a new election for the office, which
82 shall occur no less than thirty-five (35) days after the date of
83 the election that resulted in equal votes.

84 (2) The statements required by this section shall contain a
85 certification, signed and dated by a majority of the election
86 commissioners, which shall read as follows:

87 "We, the undersigned election commissioners, do
88 hereby certify that this statement of the whole number
89 of votes contain the official vote for the election
90 reflected therein."

91 (3) The statements required by this section shall be
92 transmitted to the Secretary of State on such forms and by such
93 methods as may be required by rules and regulations promulgated by
94 the Secretary of State.



95 **SECTION 4.** Section 23-15-611, Mississippi Code of 1972, is
96 amended as follows:

97 23-15-611. (1) In municipal elections, poll managers shall,
98 immediately upon the closing of the polls, count the ballots and
99 ascertain the number of votes cast in each voting precinct for
100 each of the candidates or ballot measures and make a return
101 thereof to the municipal election commissioners. On the day
102 following the election, the election commissioners shall canvass
103 the returns so received from all voting precincts and shall,
104 within six (6) days after the election, deliver to each person
105 receiving the highest number of votes a certificate of election.
106 If it shall appear that any two (2) or more of the candidates
107 receiving the highest number of votes shall have received an equal
108 number of votes, the election shall be decided by * * * a new
109 election for the office, which shall occur no less than
110 thirty-five (35) days after the date of the election that resulted
111 in the equal votes.

112 (2) (a) Within six (6) days after any election, the
113 municipal election commissioners shall transmit a statement to the
114 Secretary of State certifying the name or names of the person or
115 persons elected, and such person or persons shall be issued
116 commissions by the Governor. The statement shall also include
117 vote totals for each candidate for each office and vote totals for
118 and against ballot measures, if any, including the vote totals for



119 each candidate and ballot measure in each precinct in the
120 municipality.

121 (b) The statements required by this subsection (2)
122 shall contain a certification, signed and dated by a majority of
123 the municipal election commissioners, which shall read as follows:

124 "We, the undersigned municipal election commissioners, do
125 hereby certify that this statement contains the official vote for
126 the election reflected therein."

127 (c) The statements required by this subsection (2)
128 shall be transmitted to the Secretary of State on such forms and
129 by such methods as may be required by rules and regulations
130 promulgated by the Secretary of State.

131 (d) If the statement certifying the names of the
132 persons elected is not transmitted to the Secretary of State as
133 required by this subsection (2), the Secretary of State may issue
134 a show cause order directing the municipal election commissioners
135 to provide to the Secretary of State written response containing
136 the reasons for their failure to transmit the statement. The
137 municipal election commissioners shall file their response to the
138 show cause order with the Secretary of State within five (5)
139 working days after the issuance of the show cause order. If the
140 statement certifying the names of the persons elected is not
141 transmitted to the Secretary of State within five (5) working days
142 after the issuance of the show cause order, the Secretary of State
143 may petition a court of competent jurisdiction to compel the



144 municipal election commissioners to comply with this subsection
145 (2). If the statement certifying the names of the persons elected
146 is received by the Secretary of State within five (5) days after
147 the issuance of the show cause order, a response to the show cause
148 order shall not be required.

149 **SECTION 5.** Section 23-15-221, Mississippi Code of 1972, is
150 amended as follows:

151 23-15-221. (1) The governing authorities of municipalities
152 having a population of less than twenty thousand (20,000)
153 inhabitants according to the last federal decennial census shall
154 appoint three (3) election commissioners; the governing
155 authorities of municipalities having a population of twenty
156 thousand (20,000) inhabitants or more and less than one hundred
157 thousand (100,000) inhabitants according to the last federal
158 decennial census shall appoint five (5) election commissioners;
159 and the governing authorities of municipalities having a
160 population of one hundred thousand (100,000) or more according to
161 the last federal decennial census shall appoint seven (7) election
162 commissioners. The municipal election commissioners, in
163 conjunction with the municipal clerk, shall perform all the duties
164 in respect to the municipal election prescribed by law to be
165 performed by the county election commissioners where not otherwise
166 provided. The election commissioners shall, in case there be but
167 one (1) election precinct in the municipality, act as poll
168 managers themselves.



169 (2) The city council or board of aldermen or other governing
170 authority of any municipality desiring to avail itself of the
171 provisions of the Mississippi Election Code regarding the duties
172 of municipal election commissioners shall adopt an ordinance
173 declaring its intention to enter into an agreement with the
174 municipality's county to have the county election commissioners
175 conduct municipal elections and other functions that are performed
176 by municipal election commissioners for the benefit of the
177 efficiency and conformity of elections, to be effective on and
178 after a date fixed in the ordinance which must be at least thirty
179 (30) days after the ordinance is adopted and on the first day of a
180 month. If the municipality is located in more than one (1)
181 county, the municipality shall choose which county it wants to
182 conduct its elections and other duties of its municipal election
183 commissioners and enter into an agreement with that county to have
184 that county's election commissioners conduct the municipal
185 elections and other functions that are performed by municipal
186 election commissioners for the benefit of the efficiency and
187 conformity of elections, to be effective on and after a date fixed
188 in the ordinance which must be at least thirty (30) days after the
189 ordinance is adopted and on the first day of a month. A certified
190 copy of this ordinance shall be immediately forwarded to the Chair
191 of the State Board of Election Commissioners. The municipal
192 authorities shall have a copy of the ordinance published once a
193 week for three (3) consecutive weeks in at least one (1) newspaper



194 published in the municipality and having a general circulation
195 therein. The first publication shall be not less than
196 twenty-eight (28) days before the effective date fixed in the
197 ordinance, and the last publication shall be made not less than
198 seven (7) days before such date. If no newspaper is published in
199 the municipality, then notice shall be given by publishing the
200 ordinance for the required time in some newspaper published in the
201 same or an adjoining county having a general circulation in the
202 municipality. A copy of the ordinance shall also be posted at
203 three (3) public places in the municipality for a period of at
204 least twenty-one (21) days during the time of its publication in a
205 newspaper. The publication of the ordinance may be made as
206 provided in Section 21-17-19. Proof of publication must also be
207 furnished to the Chair of the State Board of Election
208 Commissioners.

209 (3) If a city council or board of aldermen or other
210 governing authority of any municipality adopts an ordinance to
211 abolish municipal election commissioners in the municipality's
212 county and authorize county election commissioners to conduct the
213 municipal election commissioners' duties, the county election
214 commissioners shall conduct all of the duties of the municipal
215 election commissioners including, but not limited to:

216 (a) Canvass the results of bond elections in a
217 municipality;



218 (b) Canvass the returns of special and general
219 elections for mayor and councilmen and within five (5) days after
220 any special or general election, deliver to each person receiving
221 the highest number of votes a certificate of election;

222 (c) Certify to the Secretary of State the name or names
223 of the person or persons elected at special and general elections
224 within ten (10) days after any special or general election;

225 (d) Revise the primary pollbooks for municipalities at
226 the time and in the manner and in accordance with the laws now
227 fixed and in force for revising pollbooks, except they shall not
228 remove from the pollbook any person who is qualified to
229 participate in primary elections;

230 (e) Print the pollbooks that are to be used in
231 municipal elections;

232 (f) Print and distribute the "official ballots";

233 (g) Perform the duties of poll managers in the event
234 there is only one (1) election precinct in the municipality;

235 (h) Perform any of the duties required of the municipal
236 executive committee pursuant to Section 23-15-239 if the municipal
237 executive committee has entered into a written agreement with the
238 municipal clerk or the municipal or county election commission
239 that gives such authorization;

240 (i) Determine whether each party candidate in the
241 municipal general election is a qualified elector of the
242 municipality, and of the ward if the office sought is a ward



243 office, whether each candidate either meets all other
244 qualifications to hold the office he or she is seeking or presents
245 absolute proof that he or she will, subject to no contingencies,
246 meet all qualifications on or before the date of the general or
247 special election at which he or she could be elected to office,
248 and whether any candidate has been convicted of any felony in a
249 court of this state, or has been convicted on or after December 8,
250 1992, of any offense in another state which is a felony under the
251 laws of this state, or has been convicted of any felony in a
252 federal court on or after December 8, 1992;

253 (j) Declare each candidate elected without opposition,
254 if the candidate meets all the qualifications to hold the office
255 as determined pursuant to a review by the commission in accordance
256 with the provisions of paragraph (i) of this subsection (3);

257 (k) Canvass the returns for municipal elections
258 received from all voting precincts and within ten (10) days after
259 the election, deliver to each person receiving the highest number
260 of votes a certificate of election. If it shall appear that any
261 two (2) or more of the candidates receiving the highest number of
262 votes shall have received an equal number of votes, the election
263 shall be decided by * * * a new election for the office, which
264 shall occur no less than thirty-five (35) days after the date of
265 the election that resulted in the equal votes;

266 (l) Transmit the statement provided in Section
267 23-15-611 to the Secretary of State certifying the name or names



268 of the person or persons elected at municipal elections, and such
269 person or persons shall be issued commissions by the Governor;

270 (m) Receiving the filed document by any person desiring
271 to contest the qualifications of another person who has qualified
272 pursuant to the provisions of Section 23-15-361 as a candidate for
273 municipal office elected on the date designated by law for regular
274 municipal elections that specifically sets forth the grounds of
275 the challenge no later than thirty-one (31) days after the date of
276 the first primary election set forth in Section 23-15-309; and

277 (n) Perform all other duties with respect to the
278 municipal election prescribed by law.

279 (4) If the city council or board of aldermen or other
280 governing authority of any municipality does not desire to avail
281 itself of the provisions of the Mississippi Election Code
282 regarding the duties of municipal election commissioners, then
283 nothing in this section shall be construed in any way to affect,
284 alter or modify the existence of those municipal election
285 commissioners now operating under the laws relating to municipal
286 election commissioners provided in the Mississippi Code of 1972.
287 Those municipalities shall continue to enjoy the form of election
288 commissions and the conduct of the respective elections that are
289 now enjoyed by them, and each shall possess all rights, powers,
290 privileges and immunities granted and conferred under the laws
291 relating to municipal election commissioners provided in the
292 Mississippi Code of 1972.



293 **SECTION 6.** Section 23-15-857, Mississippi Code of 1972, is
294 amended as follows:

295 23-15-857. (1) When there is a vacancy in an elective
296 office in a city, town or village, the unexpired term of which
297 shall not exceed six (6) months, the same shall be filled by
298 appointment by the governing authority or remainder of the
299 governing authority of the city, town or village. The municipal
300 clerk shall certify the appointment to the Secretary of State and
301 the appointed person or persons shall be commissioned by the
302 Governor.

303 (2) When there is a vacancy in an elective office in a city,
304 town or village, the unexpired term of which shall exceed six (6)
305 months, the governing authority or remainder of the governing
306 authority of the city, town or village shall make and enter on the
307 minutes an order for an election to be held in the city, town or
308 village to fill the vacancy and fix a date upon which the election
309 shall be held. The order shall be made and entered upon the
310 minutes at the next regular meeting of the governing authority
311 after the vacancy occurs, or at a special meeting to be held not
312 later than ten (10) days after the vacancy occurs, Saturdays,
313 Sundays and legal holidays excluded, whichever shall occur first.
314 The election shall be held on a date not less than thirty (30)
315 days nor more than forty-five (45) days after the date upon which
316 the order is adopted.



317 Notice of the election shall be given by the municipal clerk
318 by notice published in a newspaper published in the municipality.
319 The notice shall be published once each week for three (3)
320 successive weeks preceding the date of the election. The first
321 notice shall be published at least thirty (30) days before the
322 date of the election. Notice shall also be given by posting a
323 copy of the notice at three (3) public places in the municipality
324 not less than twenty-one (21) days before the date of the
325 election. One (1) of the notices shall be posted at the city,
326 town or village hall. In the event that there is no newspaper
327 published in the municipality, such notice shall be published as
328 provided for above in a newspaper that has a general circulation
329 within the municipality and by posting as provided for above.
330 Additionally, the governing authority may publish the notice in
331 that newspaper for as many additional times as may be deemed
332 necessary by the governing authority.

333 Each candidate shall qualify by petition filed with the
334 municipal clerk by 5:00 p.m. at least twenty (20) days before the
335 date of the election. If the twentieth day to file the petition
336 before the election falls on a Sunday or legal holiday, the
337 petition filed on the business day immediately following the
338 Sunday or legal holiday shall be accepted. The petition shall be
339 signed by not less than the following number of qualified
340 electors:



341 (a) For an office of a city, town, village or municipal
342 district having a population of one thousand (1,000) or more, not
343 less than fifty (50) qualified electors.

344 (b) For an office of a city, town, village or municipal
345 district having a population of less than one thousand (1,000),
346 not less than fifteen (15) qualified electors.

347 No qualifying fee shall be required of any candidate, and the
348 election shall be held as far as practicable in the same manner as
349 municipal general elections.

350 The candidate receiving a majority of the votes cast in the
351 election shall be elected. If no candidate receives a majority
352 vote at the election, the two (2) candidates receiving the highest
353 number of votes shall have their names placed on the ballot for
354 the election to be held three (3) weeks thereafter. The candidate
355 receiving a majority of the votes cast in the election shall be
356 elected. However, if no candidate receives a majority and there
357 is a tie in the election of those receiving the next highest vote,
358 those receiving the next highest vote and the candidate receiving
359 the highest vote shall have their names placed on the ballot for
360 the election to be held three (3) weeks thereafter, and whoever
361 receives the most votes cast in the election shall be elected.

362 Should the election held three (3) weeks thereafter result in
363 a tie vote, the prevailing candidate shall be decided by * * * a
364 new election for the office, which shall occur no less than



365 thirty-five (35) days after the date of the election that resulted
366 in equal votes.

367 The clerk of the election commission shall then give a
368 certificate of election to the person elected, and return to the
369 Secretary of State a copy of the order of holding the election and
370 runoff election results, certified by the clerk of the governing
371 authority. The person elected shall be commissioned by the
372 Governor.

373 However, if nineteen (19) days before the date of the
374 election only one (1) person shall have qualified as a candidate,
375 the governing authority, or remainder of the governing authority,
376 shall dispense with the election and appoint that one (1)
377 candidate in lieu of an election. In the event no person shall
378 have qualified by 5:00 p.m. at least twenty (20) days before the
379 date of the election, the governing authority or remainder of the
380 governing authority shall dispense with the election and fill the
381 vacancy by appointment. The clerk of the governing authority
382 shall certify the appointment to the Secretary of State, and the
383 appointed person shall be commissioned by the Governor.

384 **SECTION 7.** This act shall take effect and be in force from
385 and after July 1, 2018.

