

By: Representative Banks

To: Apportionment and  
Elections

HOUSE BILL NO. 28

1 AN ACT TO AMEND SECTIONS 23-15-507 AND 23-15-531.1,  
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY OPTICAL MARK READING  
3 EQUIPMENT OR DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT  
4 PURCHASED OR ACQUIRED AFTER JULY 1, 2019, MUST ALLOW THE VOTER TO  
5 SCAN HIS OR HER ACTUAL BALLOT INTO THE MACHINE; TO BRING FORWARD  
6 SECTIONS 23-15-531, 23-15-531.2, 23-15-531.3, 23-15-531.4,  
7 23-15-531.5, 23-15-531.6, 23-15-531.9, 23-15-531.10 AND  
8 23-15-531.12, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE THE USE OF  
9 DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT, FOR THE PURPOSE OF  
10 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 23-15-507, Mississippi Code of 1972, is  
13 amended as follows:

14 23-15-507. From and after July 1, 2019, no OMR equipment  
15 shall be acquired \* \* \* in accordance with this chapter unless it  
16 shall:

17 (a) Permit eligible voters to vote at any election for  
18 all persons for whom they are lawfully entitled to vote; to vote  
19 for as many persons for an office as they are lawfully entitled to  
20 vote; to vote for or against any ballot initiative, measure or  
21 other local issue upon which they are lawfully entitled to vote;



22           (b) \* \* \* Be capable of rejecting choices marked on the  
23 ballot if the number of choices exceeds the number that the voter  
24 is entitled to vote for the office or on the measure;

25           (c) Permit each voter, in presidential elections, by  
26 one (1) mark to vote for the candidates of that party for  
27 President, Vice President, and their presidential electors, or to  
28 vote individually for the electors of their choice when permitted  
29 by law;

30           (d) Permit each voter, in other than primary elections,  
31 to vote for the nominees of one or more parties and for  
32 independent candidates;

33           (e) Permit each voter to vote for candidates only in  
34 the primary in which he or she is qualified to vote;

35           (f) Permit each voter to vote for persons whose names  
36 are not on the printed ballot;

37           (g) Be suitably designed for the purpose used, of  
38 durable construction, and may be used safely, efficiently and  
39 accurately in the conduct of elections and the counting of  
40 ballots;

41           (h) Be provided with means for sealing the ballots  
42 after the close of the polls;

43           (i) When properly operated, record correctly and count  
44 accurately all votes cast; \* \* \*



45 (j) Provide the voter with a set of instructions that  
46 will be displayed in such a way that a voter may readily learn the  
47 method of voting \* \* \*; and

48 (k) Permit the voter to scan his or her actual voted  
49 ballot into the machine.

50 **SECTION 2.** Section 23-15-531.1, Mississippi Code of 1972, is  
51 amended as follows:

52 23-15-531.1. (1) The board of supervisors of each county  
53 and the governing authorities of each municipality are hereby  
54 authorized and empowered, in their discretion, to purchase or rent  
55 DRE units that meets the requirements of subsection (2) of this  
56 section and may use such system in all or a part of the precincts  
57 within its boundaries. The provisions of this chapter shall be  
58 controlling with respect to elections in which a DRE unit is used,  
59 and shall be liberally construed so as to carry out the purpose of  
60 this chapter. The provisions of the election law relating to the  
61 conduct of elections with paper ballots, insofar as they are  
62 applicable, shall apply.

63 (2) From and after July 1, 2019, no DRE unit shall be  
64 acquired \* \* \* in accordance with this chapter unless it shall:

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

68 (b) Provide the voter with the opportunity, in a  
69 private and independent manner, to change the ballot or correct



70 any error before the ballot is cast and counted, including, but  
71 not limited to, the opportunity to correct the error through the  
72 issuance of a replacement ballot if the voter is otherwise unable  
73 to change the ballot or correct any error;

74 (c) If the voter votes for more candidates for a single  
75 office than are eligible for election:

76 (i) Notify the voter that he or she has selected  
77 more candidates for that office than are eligible for election;

78 (ii) Notify the voter before his or her vote is  
79 cast and counted of the effect of casting multiple votes for such  
80 an office; and

81 (iii) Provide the voter with the opportunity to  
82 correct the ballot before the ballot is cast and counted;

83 (d) Produce a permanent paper record with a manual  
84 audit capability;

85 (e) Have the capability to print the ballots cast by  
86 electors;

87 (f) Be accessible for individuals with disabilities,  
88 including, but not limited to, nonvisual accessibility for the  
89 blind and visually impaired, in a manner that provides the same  
90 opportunity for access and participation, including privacy and  
91 independence, as for other voters. This requirement may be  
92 satisfied through the use of at least one (1) DRE unit or other  
93 voting unit equipped for individuals with disabilities at each  
94 polling place;



95 (g) Provide alternative language accessibility pursuant  
96 to the requirements of the Voting Rights Act of 1965; \* \* \*

97 (h) Have a residual vote rate in counting ballots  
98 attributable to the voting system and not to voter error that  
99 complies with error rate standards established under the voting  
100 system standards issued by the Federal Election Commission in  
101 effect as of October 29, 2002 \* \* \*; and

102 (i) Permit the voter to scan his or her actual voted  
103 ballot into the machine.

104 **SECTION 3.** Section 23-15-531, Mississippi Code of 1972, is  
105 brought forward as follows:

106 23-15-531. "Direct recording electronic voting equipment  
107 (DRE unit)" means a computer driven unit for casting and counting  
108 votes on which an elector touches a video screen or a button  
109 adjacent to a video screen to cast his or her vote.

110 **SECTION 4.** Section 23-15-531.2, Mississippi Code of 1972, is  
111 brought forward as follows:

112 23-15-531.2. DRE units shall be arranged in the polling  
113 place in such a manner as to:

114 (a) Ensure the privacy of the elector while voting on  
115 the units;

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



118 (c) Permit the public and lawful poll watchers to  
119 observe the voting without affecting the privacy of the electors  
120 as they vote.

121 **SECTION 5.** Section 23-15-531.3, Mississippi Code of 1972, is  
122 brought forward as follows:

123 23-15-531.3. (1) The ballots for DRE units shall be of such  
124 size and arrangement as will suit the construction of the DRE  
125 screen and shall be in plain, clear type that is easily readable  
126 by persons with normal vision.

127 (2) (a) If the DRE unit has the capacity for color display,  
128 the names of all candidates in a particular race shall be  
129 displayed in the same color, font and size, and the political  
130 party or affiliation of candidates may be displayed in a color  
131 different from that used to display the names of the candidates,  
132 but all political parties or affiliations shall be displayed in  
133 the same color. All political party names shall be displayed in  
134 the same size and font.

135 (b) All ballot questions, local options, referenda and  
136 constitutional amendments shall be displayed in the same color.

137 **SECTION 6.** Section 23-15-531.4, Mississippi Code of 1972, is  
138 brought forward as follows:

139 23-15-531.4. (1) The circuit clerk shall be the custodian  
140 of the DRE units acquired by the county and shall be charged with  
141 the proper storage, maintenance and repair of the county's DRE  
142 units.



143 (2) The municipal clerk shall be the custodian of the DRE  
144 unit acquired by the municipality, and shall be charged with the  
145 proper storage, maintenance and repair of the DRE unit.

146 (3) The custodian shall provide compensation for the safe  
147 storage and care of the DRE units and related equipment if the  
148 same are stored and secured by a person or entity other than the  
149 circuit or municipal clerk.

150 **SECTION 7.** Section 23-15-531.5, Mississippi Code of 1972, is  
151 brought forward as follows:

152 23-15-531.5. (1) The arrangement of offices, names of  
153 candidates and ballot questions upon the DRE ballots shall conform  
154 as nearly as practicable to the arrangement of offices, names of  
155 candidates and ballot questions on paper ballots.

156 (2) The officials in charge of the election of each county  
157 or municipality shall cause the creation of the database for each  
158 DRE unit that is to be used in any precinct within the county or  
159 municipality.

160 **SECTION 8.** Section 23-15-531.6, Mississippi Code of 1972, is  
161 brought forward as follows:

162 23-15-531.6. (1) For each primary or general election, the  
163 officials in charge of the election shall use at least  
164 seventy-five percent (75%) of all DRE units available to the  
165 county or municipality, as the case may be. For all other  
166 elections in which the officials in charge of the election choose  
167 to use DRE units, at least one-third (1/3) of all DRE units



168 available to the county or municipality, as the case may be, shall  
169 be used in such elections.

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

175 (3) (a) On or before the second day before any election,  
176 the officials in charge of the conduct of the election shall cause  
177 each DRE unit to be tested for logic and accuracy to ascertain  
178 that the units will correctly count the votes cast for all offices  
179 and on all questions, in a manner the Secretary of State may  
180 further prescribe by rule or regulation.

181 (b) Public notice of the time and place of the test  
182 shall be made at least five (5) days before the date of the test.  
183 Candidates, representatives of candidates, political parties, news  
184 media and the public shall be permitted to observe the testing of  
185 the DRE units.

186 (4) The officials in charge of the conduct of the election  
187 shall test all memory cards and encoders to be used in any  
188 election.

189 (5) The officials in charge of the election shall require  
190 that each DRE unit be inspected and sealed before the delivery of  
191 each DRE unit to the polling place. Before opening the polls each  
192 day on which the DRE units will be used in an election, the poll





193 manager shall break the seal on each unit, turn on each unit,  
194 certify that each unit is operating properly and is set to zero,  
195 and print a zero tape certifying that each unit is set to zero and  
196 shall keep or record such certification on each unit.

197 (6) The officials in charge of the election, election  
198 commissioners and poll managers shall provide ample protection  
199 against molestation of and injury to the DRE units, and, for that  
200 purpose, the officials in charge of the election, election  
201 commissioners and poll managers may call upon any law enforcement  
202 officer to furnish any assistance that may be necessary. It shall  
203 be the duty of any law enforcement officer to furnish assistance  
204 when so requested by the officials in charge of the election,  
205 election commissioner or poll manager.

206 (7) The officials in charge of the election, in conjunction  
207 with the governing authorities, shall, at least one (1) hour  
208 before opening the polls:

209 (a) Provide sufficient lighting to enable electors to  
210 read the ballot and to enable poll managers to examine the booth  
211 and conduct their responsibilities;

212 (b) Provide directions for voting on the DRE units that  
213 shall be prominently posted within each voting booth and provide  
214 at least one (1) sample ballot for each primary or general  
215 election shall be prominently posted outside the enclosed space  
216 within the polling place;



217 (c) Ensure that each DRE unit and its tabulating  
218 mechanism is secure throughout the day; and

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

221 **SECTION 9.** Section 23-15-531.9, Mississippi Code of 1972, is  
222 brought forward as follows:

223 23-15-531.9. (1) A duly qualified elector shall cast his or  
224 her vote on a DRE unit by touching the screen or pressing the  
225 appropriate button on the DRE unit for the candidate or ballot  
226 measure of the elector's choice. After pressing the appropriate  
227 button on the DRE unit or location on the screen to cast the  
228 ballot, the elector's vote shall be final and shall not be  
229 subsequently altered.

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

238 **SECTION 10.** Section 23-15-531.10, Mississippi Code of 1972,  
239 is brought forward as follows:

240 23-15-531.10. (1) In elections in which DRE units are used,  
241 the ballots shall be counted at the precinct under the direction



242 of the officials in charge of the election. All persons who  
243 perform any duties at the precinct shall take the oath provided in  
244 Section 268, Mississippi Constitution of 1890 and only those  
245 persons shall touch any ballot, container, paper or machine used  
246 in the conduct of the count or be permitted in the immediate area  
247 where the ballots are counted.

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

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

256 (a) The poll manager shall obtain the results tape from  
257 each DRE unit and verify that the number of ballots cast as  
258 recorded on the tape matches the public count number as displayed  
259 on the DRE unit; and

260 (b) The poll manager shall extract the memory card, if  
261 applicable, from each DRE unit.

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

266 (i) The number of valid ballots;



267 (ii) The number of spoiled ballots;  
268 (iii) The number of affidavit ballots;  
269 (iv) The number of accepted and rejected absentee  
270 ballots;  
271 (v) The number of challenged and rejected ballots;  
272 and  
273 (vi) The number of unused paper ballots.

274 (b) The poll manager shall cause to be placed in the  
275 ballot box or supply container, should the supply container be  
276 capable of being sealed and secured, one (1) copy of the recap  
277 form, affidavit ballots, absentee ballots, spoiled ballots,  
278 challenged and rejected ballots and any unused paper ballots.

279 (5) The poll manager shall collect and retain the zero tape  
280 and the results tape for each DRE unit and place the tapes with  
281 the memory card, if any, for each unit and enclose all such items  
282 for all of the DRE units used in the precinct in the memory card  
283 transport bag which shall be sealed and initialed by the poll  
284 manager so that it cannot be opened without breaking the seal.  
285 The memory card transport bag shall be placed in the ballot box.

286 (6) The receiving and returning poll manager shall then  
287 deliver the sealed ballot box to the tabulating center for the  
288 county or municipality or to such other place designated by the  
289 officials in charge of the election and shall receive a receipt  
290 therefor. The copies of the recap forms, unused ballots, records



291 and other materials shall be returned to the designated location  
292 and retained as provided by law.

293 (7) Upon receipt of the sealed ballot box and memory card  
294 transport bag that contains the zero tapes, results tapes and  
295 memory cards, the officials in charge of the election shall break  
296 the seal of the memory card transport bag and remove its contents.  
297 The officials in charge of the election shall then download the  
298 results stored on the memory card from each DRE unit into the  
299 election management system located at the central tabulation point  
300 of the county in order to obtain election results for  
301 certification.

302 **SECTION 11.** Section 23-15-531.12, Mississippi Code of 1972,  
303 is brought forward as follows:

304 23-15-531.12. If for any reason any DRE unit shall become  
305 inoperable, the poll managers, or the officials in charge of the  
306 election, shall direct voters to an operating DRE unit or to cast  
307 emergency paper ballots. Such paper ballots shall be administered  
308 in accordance with the laws concerning paper ballots.

309 **SECTION 12.** This act shall take effect and be in force from  
310 and after July 1, 2019.

