

By: Representative Staples

To: Apportionment and  
Elections

HOUSE BILL NO. 784

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, 2019.

