

By: Representative Scott

To: Apportionment and
Elections

HOUSE BILL NO. 320

1 AN ACT TO AMEND SECTION 23-15-523, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT FOR GENERAL AND SPECIAL ELECTIONS, ALL BALLOTS
3 THAT HAVE BEEN REJECTED BY THE OMR EQUIPMENT AND THAT ARE DAMAGED
4 OR DEFECTIVE, BLANK OR OVERVOTED WILL BE REVIEWED BY THE
5 RESOLUTION BOARD, BUT FOR PRIMARY ELECTIONS, THOSE BALLOTS WILL BE
6 REVIEWED BY THE COUNTY OR MUNICIPAL EXECUTIVE COMMITTEE, AS
7 APPLICABLE; TO AMEND SECTION 23-15-639, MISSISSIPPI CODE OF 1972,
8 TO PROVIDE THAT THE EXAMINATION AND COUNTING OF ALL ABSENTEE
9 BALLOTS SHALL BE CONDUCTED BY THE RESOLUTION BOARD IN GENERAL AND
10 SPECIAL ELECTIONS AND SHALL BE CONDUCTED BY THE COUNTY OR
11 MUNICIPAL EXECUTIVE COMMITTEE, AS APPROPRIATE, IN PRIMARY
12 ELECTIONS; TO BRING FORWARD SECTIONS 23-15-573 AND 23-15-597,
13 MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT;
14 AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 23-15-523, Mississippi Code of 1972, is
17 amended as follows:

18 23-15-523. (1) All proceedings at the counting center shall
19 be under the direction of the election commissioners or officials
20 in charge of the election, and shall be conducted under the
21 observations of the public, but no persons except those authorized
22 for the purpose shall touch any ballot. All persons who are
23 engaged in processing and counting of the ballots shall take the
24 oath provided in Section 268, Mississippi Constitution of 1890.



(2) The election commissioners or the officials in charge of the election shall appoint qualified electors who have received the training required by subsection (11) of this section to serve as members of the "resolution board." An odd number of not less than three (3) members shall be appointed to the resolution board. The members of the board shall take the oath provided in Section 268, Mississippi Constitution of 1890. For general and special elections, all ballots that have been rejected by the OMR equipment and that are damaged or defective, blank or overvoted will be reviewed by the board. For primary elections, all ballots that have been rejected by the OMR equipment and that are damaged or defective, blank or overvoted will be reviewed by the county or municipal executive committee, as applicable. Election commissioners, candidates who are on the ballot and the spouse, parents, siblings or children of such a candidate shall not be appointed to the resolution board. In general and special elections, members of the party executive committees shall not be appointed to the resolution board unless members of all of the party executive committees who have a candidate on the ballot are appointed to the resolution board.

(3) (a) If any ballot is damaged or defective so that it cannot be properly counted by the OMR equipment, the ballot will be deposited in an envelope provided for that purpose marked "RESOLUTION BOARD * * *" or "EXECUTIVE COMMITTEE," as applicable.



49 All such ballots shall be carefully handled so as to avoid
50 altering, removing or adding any mark on the ballot.

51 (b) The election commissioners or the officials in
52 charge of the election shall have the members of the resolution
53 board, for a general or special election, or the members of the
54 county or municipal executive committee, for a primary election,
55 ascertain the intent of the voter, if possible, and, if so,
56 manually count any damaged or defective ballots.

57 (c) The resolution board or the executive committee, as
58 appropriate, shall prepare a duplicate to the damaged or defective
59 ballot in the following manner:

60 (i) The resolution board or the executive
61 committee, as appropriate, shall prepare a duplicate to the
62 original damaged or defective ballot marked identically to the
63 original.

64 (ii) The resolution board or the executive
65 committee, as appropriate, shall mark the first original they
66 examine as "Original #1" and the duplicate of this original as
67 "Duplicate #1." Later originals and duplicates shall be likewise
68 marked and numbered consecutively so the duplicate of each
69 original can be identified. Duplicate ballots shall be stamped in
70 a different manner from the original ballots so that they may be
71 easily distinguished from the originals.

72 (iii) The duplicate ballots prepared pursuant to
73 this paragraph shall be counted by the OMR equipment.



74 (4) The resolution board or the executive committee, as
75 appropriate, shall examine ballots that have been rejected by the
76 OMR equipment for appearing to be "blank" to verify if they are
77 blank or were marked with a "nondetectable" marking device. If it
78 is determined that the ballot was marked with a nondetectable
79 device, the resolution board or the executive committee, as
80 appropriate, shall prepare a duplicate to the original blank
81 ballot in the same manner and in accordance with the same process
82 provided in subsection (3)(c).

83 (5) All ballots that are rejected by the OMR equipment and
84 that contain overvotes shall be inspected by the resolution board
85 or the executive committee, as appropriate. Regarding those
86 rejected ballots upon which an overvote appears, if the voter
87 intent cannot be determined by the resolution board or the
88 executive committee, as appropriate, the officials in charge of
89 the election may use the OMR equipment in determining the vote in
90 the races that are unaffected by the overvote. All other ballots
91 that are overvoted shall be counted manually following the
92 provisions of this section at the direction of the officials in
93 charge of the election. The return printed by the OMR equipment
94 to which have been added the manually tallied ballots, which shall
95 be duly certified by the officials in charge of the election,
96 shall constitute the official return of each voting precinct.
97 Unofficial and incomplete returns may be released during the



count. Upon the completion of the counting, the official returns shall be open to the public.

(6) When the resolution board or the executive committee, as appropriate, reviews any OMR ballot in which the voter has failed to fill in the arrow, oval, circle or square for a candidate or a ballot measure, the resolution board or the executive committee, as appropriate, shall, if the intent of the voter can be ascertained, count the vote if:

(a) The voter marks the ballot with a "cross" (X) or "checkmark" (✓) and the lines that form the mark intersect within or on the line of the arrow, oval, circle or square by the ballot measure or the name of the candidate.

(b) The voter blackens the arrow, oval, circle or square adjacent to the ballot measure or the name of the candidate in pencil or ink and the blackened portion extends beyond the boundaries of the arrow, oval, circle or square.

(c) The voter marks the ballot with a "cross" (X) or "checkmark" (✓) and the lines that form the mark intersect adjacent to the ballot measure or the name of the candidate.

(d) The voter underlines the ballot measure or the name of a candidate.

(e) The voter draws a line from the arrow, oval, circle or square to a ballot measure or the name of a candidate.

(f) The voter draws a circle or oval around the ballot measure or the name of the candidate.



123 (g) The voter draws a circle or oval around the arrow,
124 oval, circle or square adjacent to the ballot measure or the name
125 of the candidate.

126 (7) The resolution board or the executive committee, as
127 appropriate, when inspecting an OMR ballot that contains or
128 appears to contain one or more overvotes, appears to be damaged or
129 defective, or is rejected by the OMR equipment for any reason or
130 cannot be counted by the OMR equipment, shall make its
131 determination in accordance with the following:

132 (a) When an elector casts more votes for any office or
133 measure than he or she is entitled to cast at an election, all the
134 elector's votes for that office or measure are invalid and the
135 elector is deemed to have voted for none of them. If an elector
136 casts less votes for any office or measure than he or she is
137 entitled to cast at an election, all votes cast by the elector
138 shall be counted but no vote shall be counted more than once.

139 (b) If an elector casts more than one (1) vote for the
140 same candidate for the same office, the first vote is valid and
141 the remaining votes for that candidate are invalid.

142 (c) No write-in vote for a candidate whose name is
143 printed on the ballot shall be regarded as invalid due to
144 misspelling a candidate's name, or by abbreviation, addition or
145 omission or use of a wrong initial in the name, as long as the
146 intent of the voter can be ascertained.



147 (d) In any case where a voter writes in the name of a
148 candidate for President of the United States whose name is printed
149 on the general election ballot, the failure by the voter to write
150 in the name of a candidate for the Office of Vice President of the
151 United States on the general election ballot does not invalidate
152 the elector's vote for the slate of electors for any candidate
153 whose name is written in for the Office of President of the United
154 States.

155 (e) For any ballot measure in which the words "for" or
156 "against" are printed on a ballot, if the voter shall write the
157 word "for" or the word "against" instead of or in addition to
158 marking the ballot in accordance with the ballot instruction in
159 the space adjacent to the preprinted words "for" or "against," the
160 resolution board or the executive committee, as appropriate,
161 shall, in reviewing such ballot, count the vote in accordance with
162 the voter's handwritten preference, unless the voter marks the
163 ballot in the space adjacent to the preprinted words "for" or
164 "against" contrary to the handwritten preference, in which case no
165 vote shall be recorded for such ballot in regard to the ballot
166 measure.

167 (f) For any ballot measure in which the words "yes" or
168 "no" are printed on a ballot, if the voter shall write the word
169 "yes" or the word "no" instead of or in addition to marking the
170 ballot in accordance with the ballot instructions in the space
171 adjacent to the preprinted words "yes" or "no," the resolution



board or the executive committee, as appropriate, shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "yes" or "no" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

(8) OMR equipment shall be programmed, calibrated, adjusted and set up to reject ballots that appear to be damaged or defective. Any switch, lever or feature on OMR equipment that enables or permits the OMR equipment to override the rejection of damaged or defective ballots so that such ballots will not be reviewed by the resolution board or the executive committee, as appropriate, shall not be used.

(9) Ballots shall be manually counted by the resolution board or the executive committee, as appropriate, only when the ballots are:

(a) Properly before the resolution board or the executive committee, as appropriate, due to being rejected by the OMR equipment because the ballots appear to be damaged or defective or are rejected by the OMR equipment for any other reason; or

(b) Properly before the resolution board or the executive committee, as appropriate, due to a malfunction in the OMR equipment.



196 (10) The resolution board or the executive committee, as
197 appropriate, shall make and keep a record regarding the handling
198 and counting of all ballots inspected under this section.

199 (11) The executive committee of each county or municipality,
200 in the case of a primary election, or the election commissioners
201 of each county or municipality, in the case of all other
202 elections, in conjunction with the circuit or municipal clerk
203 respectively, shall sponsor and conduct, a training session for up
204 to two (2) hours, not less than five (5) days before each
205 election, to instruct those qualified electors who are appointed
206 to serve as members of the resolution board as to their specific
207 duties in the election. No member appointed to serve on the
208 resolution board shall serve in any election unless he or she has
209 received such instruction once during the twelve (12) months
210 immediately preceding the date upon which the election is held.
211 Online training courses developed by the Secretary of State,
212 though not sponsored or conducted by the executive committee or
213 the election commissioners, may be used to meet the requirements
214 of this subsection (11).

215 **SECTION 2.** Section 23-15-639, Mississippi Code of 1972, is
216 amended as follows:

217 23-15-639. (1) The examination and counting of all absentee
218 ballots shall be conducted as follows:

219 (a) At the opening of the regular balloting and at the
220 opening of the polls for general and special elections, the



221 resolution board established under Section 23-15-523 and trained
222 in the process of canvassing absentee ballots shall first take the
223 envelopes containing the absentee ballots of such electors from
224 the secure location at the registrar's office, and the name,
225 address and precinct inscribed on each envelope shall be announced
226 by the resolution board. In primary elections, the county or
227 municipal executive committee, as appropriate, shall first take
228 the envelopes containing the absentee ballots of such electors
229 from the secure location at the circuit or municipal clerk's
230 office, as appropriate, and the name, address and precinct
231 inscribed on each envelope shall be announced by the county or
232 municipal executive committee, as appropriate.

233 (b) (i) For absentee ballots that were received by
234 mail, the signature on the application shall then be compared with
235 the signature in the box on the back of the envelope. A portion
236 of the elector's signature extending outside of the box shall not
237 be grounds for rejecting that elector's ballot. If it corresponds
238 and the affidavit, if one is required, is sufficient and the
239 resolution board or executive committee, as appropriate, finds
240 that the applicant is a registered and qualified voter or
241 otherwise qualified to vote, the envelope shall then be opened and
242 the ballot removed from the envelope, without its being unfolded,
243 or permitted to be unfolded or examined.

244 (ii) For absentee ballots that were cast in person
245 in the registrar's office, the resolution board shall confirm that



the voter completed the application on the front of the envelope and signed the elector's certificate in the box on the back of the envelope. If it is signed and the resolution board or executive committee, as appropriate, finds that the applicant is a registered and qualified voter or otherwise qualified to vote, the envelope shall be opened and the absentee ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined.

(c) Having observed and found the ballot to be regular as far as can be observed from its official endorsement, the resolution board or executive committee, as appropriate, shall deposit it in the ballot box with the other ballots before counting any ballots and enter the voter's name in the receipt book provided for that purpose. All absentee ballots received prior to 7:00 p.m. the day before the election shall be counted in the registrar's office by the resolution board or executive committee, as appropriate, when the polls close and then added to the votes cast in each precinct. All absentee ballots received after 7:00 p.m. the day before the election but not later than the fifth business day after the election shall be processed by the resolution board or executive committee, as appropriate.

(2) The resolution board or executive committee, as appropriate, shall also take such action as may be prescribed by the Secretary of State to ensure compliance with the identification requirements of Section 23-15-563.



(3) The resolution board or executive committee, as appropriate, shall process the absentee ballots using the procedure provided in subsection (1) of this section.

SECTION 3. Section 23-15-573, Mississippi Code of 1972, is brought forward as follows:

23-15-573. (1) If any person declares that he or she is a registered voter in the jurisdiction in which he or she offers to vote and that he or she is eligible to vote in the election, but his or her name does not appear upon the pollbooks, or that he or she is not able to cast a regular election day ballot under a provision of state or federal law but is otherwise qualified to vote, or that he or she has been illegally denied registration, or that he or she is unable to present an acceptable form of photo identification:

(a) A poll manager shall notify the person that he or she may cast an affidavit ballot at the election.

(b) The person shall be permitted to cast an affidavit ballot at the polling place upon execution of a written affidavit before one (1) of the poll managers stating that the individual:

(i) Believes he or she is a registered voter in the jurisdiction in which he or she desires to vote and is eligible to vote in the election; or

(ii) Is not able to cast a regular election day ballot under a provision of state or federal law but is otherwise qualified to vote; or



(iii) Believes that he or she has been illegally denied registration; or

(iv) Is unable to present an acceptable form of photo identification.

(c) The poll manager shall allow the individual to mark a paper ballot properly endorsed by the initialing poll manager or alternate initialing poll manager in accordance with Section 23-15-541, which shall be delivered by him or her to the proper election official who shall enclose it in an affidavit ballot envelope, with the written and signed affidavit of the voter affixed to the envelope, seal the envelope and mark plainly upon it the name of the person offering to vote.

(2) The affidavit ballot envelope shall include:

(a) The complete name of the voter;

(b) A present and previous physical and mailing address of the voter;

(c) Telephone numbers where the voter may be contacted;

(d) A statement that the affiant believes he or she is registered to vote in the jurisdiction in which he or she offers to vote;

(e) The signature of the affiant; and

(f) The signature of the poll manager at the polling place at which the affiant offers to vote.



319 (3) (a) A separate receipt book shall be maintained for
320 affidavit voters and the affidavit voters shall sign the receipt
321 book upon completing the affidavit ballot.

322 (b) If the affidavit voter is casting an affidavit
323 ballot because the voter is unable to present an acceptable form
324 of photo identification and the voter's name appears in the
325 pollbook, then the poll manager shall write "NO ID" across from
326 the voter's name and in the appropriate column in the pollbook.

327 (c) In canvassing the returns of the election, the
328 executive committee in primary elections, or the election
329 commissioners in other elections, shall examine the records and
330 allow the ballot to be counted, or not counted as it appears
331 legal.

332 (d) An affidavit ballot of a voter who was unable to
333 present an acceptable form of photo identification shall not be
334 rejected for this reason if the voter does either of the
335 following:

336 (i) Returns to the circuit clerk's office, or to
337 the municipal clerk's office for municipal elections, within five
338 (5) business days after the date of the election and presents an
339 acceptable form of photo identification;

340 (ii) Returns to the circuit clerk's office within
341 five (5) business days after the date of the election to obtain
342 the Mississippi Voter Identification Card, or in municipal
343 election, returns to the municipal clerk's office within five (5)



business days after the date of the election to present his or her Mississippi Voter Identification Card or Temporary Mississippi Voter Identification Card; or

(iii) Returns to the circuit clerk's office, or to the municipal clerk's office for municipal elections, within five (5) business days after the date of the election to execute a separate Affidavit of Religious Objection.

(4) When a person is offered the opportunity to vote by affidavit ballot, he or she shall be provided with written information that informs the person how to ascertain whether his or her affidavit ballot was counted and, if the vote was not counted, the reasons the vote was not counted.

(5) The officials in charge of the election shall process all affidavit ballots by using the Statewide Elections Management System. The officials in charge of the election shall account for all affidavit ballots cast in each election, categorizing the affidavit ballots cast by reason and recording the total number of affidavit ballots counted and not counted in each such category in the Statewide Elections Management System.

(6) The Secretary of State shall, by rule duly adopted, establish a uniform affidavit ballot envelope that shall be used in all elections in this state. The Secretary of State shall print and distribute a sufficient number of affidavit ballot envelopes to the registrar of each county for use in elections. The registrar shall distribute the affidavit ballot envelopes to



municipal and county executive committees for use in primary elections and to municipal and county election commissioners for use in all other elections.

(7) County registrars and municipal registrars shall maintain a secure free access system that complies with the Help America Vote Act of 2002, by which persons who vote by affidavit ballot may determine if their ballots were counted, and if not, the reasons the ballot was not counted.

(8) Any person who votes in any election as a result of a federal or state court order or other order extending the time established by law for closing the polls on an election day, may only vote by affidavit ballot. Any affidavit ballot cast under this subsection shall be separated and kept apart from other affidavit ballots cast by voters not affected by the order.

SECTION 4. Section 23-15-597, Mississippi Code of 1972, is brought forward as follows:

23-15-597. (1) The county executive committee shall meet no later than one (1) week from the day following each primary election to receive and canvass the returns that must be made within the time fixed by law for returns of general elections and declare the result, and announce the name of the nominees for county and county district offices and the names of those candidates to be submitted to the second primary. The vote for state, state district offices and legislative offices shall be tabulated by precincts and certified to and returned to the State



Executive Committee, such returns to be mailed by registered letter or any safe mode of transmission within thirty-six (36) hours after the returns are canvassed and the result ascertained. The State Executive Committee shall meet one (1) week from the day following the first primary election held for state, state district offices and legislative offices, and shall proceed to canvass the returns and to declare the result, and announce the names of those nominated for the different offices in the first primary and the names of those candidates whose names are to be submitted to the second primary election. The State Executive Committee shall also meet one (1) week from the day on which the second primary election was held and receive and canvass the returns for state and district offices, if any, and legislative offices, if any, voted on in the second primary. An exact and full duplicate of all tabulations by precincts as certified under this section shall be filed with the circuit clerk of the county who shall safely preserve the same in his or her office.

(2) (a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the county executive committee and the circuit clerk or the chair of the county



election commission, as appropriate. The county executive committee shall notify the State Executive Committee and the Secretary of State of the existence of the agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the State Executive Committee and the Secretary of State of the existence of the agreement.

SECTION 5. This act shall take effect and be in force from and after July 1, 2025.

